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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. APHIS–2011–0074]**

## Karnal Bunt; Regulated Areas in California

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Karnal bunt regulations to make changes to the list of areas or fields regulated because of Karnal bunt, a fungal disease of wheat. Specifically, we are removing areas and fields in Riverside County, CA, from the list of regulated areas based on our determination that those fields or areas meet our criteria for release from regulation. This action is necessary to relieve restrictions on certain areas that are no longer necessary.

**DATES:** This interim rule is effective November 22, 2011. We will consider all comments that we receive on or before January 23, 2012.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0074-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0074* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Forest Pest and Plant Pathogen Programs, EDP, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737–1236; (301) 734–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum* L.), durum wheat (*Triticum durum* L.), and triticale (*Triticum aestivum* L. x *Secale cereal* L.), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stages of wheat growth. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat-producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Articles regulated for Karnal bunt are listed in § 301.89–2. Conditions for determining whether an area is regulated for Karnal bunt are set forth in § 301.89–3.

Under the regulations in § 301.89–3(f), a field known to have been infected with Karnal bunt, as well as any noninfected acreage surrounding the field, will be released from regulation if:

- The field has been permanently removed from crop production; or
- The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the harvested grain must test negative, through the absence of bunted kernels, for Karnal bunt.

In this interim rule, we are amending the list of quarantined areas in § 301.89–3(g) by removing areas in Riverside County, CA, from the list of regulated areas, based on our determination that these fields or areas are eligible for release from regulation under the criteria in § 301.89–3(f). Specifically, we are removing the remaining 17,827 acres from Riverside County, CA.

This action relieves restrictions on fields within those areas that are no longer warranted. We note that with the removal of those fields in Riverside County, there are no longer any areas within the State of California that are quarantined because of Karnal bunt.

### Immediate Action

Immediate action is necessary to relieve restrictions on certain fields or areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

### Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Karnal bunt regulations by removing certain areas in California from quarantine based on

surveys that indicate these areas have met the criteria for release from regulation.

We have prepared an economic analysis for this interim rule. The analysis, which considers the number and types of entities that are likely to be affected by this action and the potential economic effects on those entities, provides the basis for the Administrator's determination that the rule will not have a significant economic impact on a substantial number of small entities. The economic analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov). Copies of the economic analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

### Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501 A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.89–3, paragraph (g) is amended by removing the entry for California.

Done in Washington, DC, this 16th day of November 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–30100 Filed 11–21–11; 8:45 am]

BILLING CODE 3410–34–P

## NUCLEAR REGULATORY COMMISSION

## 10 CFR Parts 1, 9, 19, 20, 30, 35, 40, 52, 55, 60, 61, 70, 73, 110, 170, and 171

**[NRC–2011–0169]**

**RIN 3150–AJ01**

## Miscellaneous Administrative Changes

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to make miscellaneous administrative changes, including updating the street address for its Region IV office and correcting an authority citation and typographical and spelling errors, and other edits and conforming changes. This document is necessary to inform the public of these changes to the NRC's regulations.

**DATES:** This rule is effective December 22, 2011.

**ADDRESSES:** You can access publicly available documents related to this final rule 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 email to *pdr.resource@nrc.gov*.

• *Federal Rulemaking Web Site:* Supporting materials related to this final rule can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0169. Address questions about NRC dockets to Carol Gallagher; telephone at (301) 492–3668; *email: Carol.Gallagher@nrc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Christina England, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 492–3663, *email: Christina.England@nrc.gov;* or Angella Love Blair, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* (301) 492–3671, *email: Angella.Love-Blair@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### Introduction

The NRC is amending its regulations at Title 10 of the Code of Federal Regulations (10 CFR) parts 1, 9, 19, 20, 26, 30, 35, 40, 52, 55, 60, 61, 70, 73, 110, 170, and 171 to make miscellaneous administrative changes. These changes include correcting the authority citation for 10 CFR part 61, updating the street address for its Region IV office, correcting typographical and spelling errors, and making other edits and conforming changes.

### Summary of Changes

*Replace ''NRC's Electronic Reading Room'' With ''NRC Library''*

The name of the NRC's online repository, formerly called ''NRC's Electronic Reading Room'' and ''Electronic Reading Room,'' has been changed to ''NRC Library.'' Only the name has changed; the Web site address remains the same. The new name is incorporated into § 9.27(a) of the NRC's regulations. In addition, the new name is incorporated in the definition of ''NRC Public Document Room'' by replacing the term ''Electronic Reading Room'' with ''NRC Library'' in § 60.2 of the NRC's regulations.

*Correct Spelling Errors*

In § 19.14(b), an ''r'' was inadvertently included in the word ''phases'' resulting in a different word, ''phrases.'' In § 19.14(b), the word ''phrases'' is replaced with the word ''phases.''

In § 60.75(c)(2), an ''m'' was inadvertently omitted from the word ''accomodate.'' In § 60.75(c)(2), the word ''accomodate'' is replaced with the word ''accommodate.''

*Add Missing Conjunction*

In § 35.50, the word ''and'' is missing between § 35.50(a)(2)(ii)(B) and 35.50(a)(2)(iii), due to a clerical error resulting from an administrative change in January 2007 (71 FR 15008). The word ''and'' is added at the end of § 35.50(a)(2)(ii)(B) after the semicolon.

*Remove Misprinted Reference*

In § 35.50(b)(1)(i), the reference, ''(ii)'', incorrectly appears after the word ''areas'' and a dash. The reference is removed from the end of 10 CFR 35.50(b)(1)(i).

*Update the Commercial Telephone Number of the NRC Operations Center*

The commercial telephone number for the NRC Operations Center has been changed. The new number, (301) 816–5100, is listed in footnote 3 to § 35.3045(c).

*Correct Zip Code*

The zip code, ''20582,'' that is listed in Appendices A, B, and C to 10 CFR part 52 is incorrect. The correct zip code, ''20852,'' is incorporated into paragraphs III.A of Appendices A, B, and C.

*Correct the Authority Citation for 10 CFR Part 61*

The authority citation for 10 CFR part 61 was revised by the final rule, ''Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities,'' on November 14, 2007 (72 FR 63939). The authority citation was further revised by the administrative rule, ''Administrative Changes'' on July 23, 2008 (73 FR 42671); however, a subsequent final rule, ''Regulatory Changes to Implement the Additional Protocol to the US/IAEA Safeguards Agreement,'' (73 FR 78599; December 23, 2008) inadvertently included the authority citation from the 2007 final rule. The authority citation is revised to correctly reflect that of the 2008 administrative rule.

*Revise Table Formatting Error in 10 CFR Part 171*

The table in paragraph (c) of § 171.16 is missing a colon and a hard return that would separate the heading, ''Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer,'' from the subsequent list item, ''35 to 500 employees.'' The formatting errors are corrected, adding a colon after the word ''Fewer'' and separating the list heading from the subsequent list item.

*Update Location of Information Collections Citation in 10 CFR Part 110*

In a final rule (75 FR 44072; July 28, 2010), the information collections were moved from §§ 110.23 and 110.26 to § 110.54. Section 110.7 is updated to reflect this reorganization of provisions.

*Delete Footnote in 10 CFR Part 170*

A final rule (76 FR 36786; June 22, 2011) eliminated footnote 5 in 10 CFR 170.31 and renumbered footnote 6 to footnote 5. Subsections 15.M through 15.Q were removed and reserved. The rule language inadvertently added a new footnote 6 next to the ''Reserved'' subsections 15.M through 15.Q that said ''There are no existing NRC licenses in the fee category.'' In § 170.31, the new footnote 6 and corresponding references in 15.M through 15.Q are removed.

*Change in Street Address for Region IV*

The street address of the NRC Region IV office has been changed. The new address is incorporated into the following sections of the NRC's regulations: Sec. 1.5(b)(4), Appendix D to 10 CFR part 20, Sec. 30.6(b)(2)(iv), Sec. 40.5(b)(2)(iv), Sec. 55.5(b)(2)(iv), Sec. 70.5(b)(2)(iv), and Appendix A to 10 CFR part 73.

**Rulemaking Procedure**

Because these amendments constitute minor administrative corrections to the regulations, the Commission finds that the notice and comment provisions of the Administrative Procedure Act are unnecessary and is exercising its authority under 5 U.S.C. 553(b)(3)(B) to publish these amendments as a final rule. The amendments are effective December 22, 2011. These amendments do not require action by any person or entity regulated by the NRC. Also, the final rule does not change the substantive responsibilities of any person or entity regulated by the NRC.

**Environmental Impact: Categorical Exclusion**

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2), which excludes from a major action rules which are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

**Paperwork Reduction Act Statement**

This final rule does not contain information collection requirements and, therefore, is not subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid Office of Management and Budget control number.

**Backfit Analysis**

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are administrative in nature and do not involve any provisions that would impose backfits as defined in 10 CFR chapter I, or would be inconsistent with the issue finality provisions in 10 CFR part 52.

**Congressional Review Act (CRA)**

Under the CRA of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

**List of Subjects**

*10 CFR Part 1*

Organization and functions (Government Agencies).

*10 CFR Part 9*

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

*10 CFR Part 19*

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

*10 CFR Part 20*

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

*10 CFR Part 30*

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection,

Reporting and recordkeeping requirements.

*10 CFR Part 35*

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

*10 CFR Part 40*

Criminal penalties, Government contracts, Hazardous materials transportation, Nuclear materials, Reporting and recordkeeping requirements, Source material, Uranium.

*10 CFR Part 52*

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

*10 CFR Part 55*

Criminal penalties, Manpower training programs, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

*10 CFR Part 60*

Criminal penalties, High-level waste, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 61*

Criminal penalties, Low-level waste, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

*10 CFR Part 70*

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

*10 CFR Part 73*

Criminal penalties, Export, Hazardous materials transportation, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

*10 CFR Part 110*

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

*10 CFR Part 171*

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Nonpayment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 1, 9, 19, 20, 30, 35, 40, 52, 55, 60, 61, 70, 73, 110, 170, and 171.

## PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

**Authority:** Sec. 23, 16181, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 759, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

■ 2. In § 1.5, revise paragraph (b)(4) to read as follows:

### § 1.5 Location of principal offices and Regional Offices.

* * * * *

(b) * * *

(4) Region IV, US NRC, 1600 E. Lamar Blvd., Arlington, TX 76011–4511.

## PART 9—PUBLIC RECORDS

■ 3. The authority citation for part 9 continues to read as follows:

**Authority:** Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Subpart A also issued 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570.

Subpart B is also issued under 5 U.S.C. 552a.

Subpart C is also issued under 5 U.S.C. 552b.

### § 9.27 [Amended]

■ 4. In § 9.27, paragraph (a), third sentence, remove the term ''NRC's Electronic Reading Room'' and add in its place the term ''NRC Library.''

## PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

■ 5. The authority citation for part 19 continues to read as follows:

**Authority:** 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282, 2297f); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 19.32 is also issued under sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

### § 19.14 [Amended]

■ 6. In § 19.14, paragraph (b), second sentence, remove the word ''phrases'' and add in its place the word ''phases.''

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

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

**Authority:** Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 8. In Appendix D to part 20, second column, revise the address for Region IV to read as follows:

### Appendix D to Part 20—United States Nuclear Regulatory Commission Regional Offices

* * * * *

US NRC, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011–4511.

* * * * *

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

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

**Authority:** Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 549 (2005).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 10. In § 30.6, revise the second sentence of paragraph (b)(2)(iv)(A) and the second sentence of paragraph (b)(2)(iv)(B) to read as follows:

**§ 30.6 Communications.**

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

(B) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment, renewal, or termination request of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

## PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 11. The authority citation for part 35 continues to read as follows:

**Authority:** Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

**§ 35.50 [Amended]**

■ 12. In § 35.50:

■ a. In paragraph (a)(2)(ii)(B), add the word ‘‘ and’’ at the end after the semi-colon.

■ b. In the introductory text of paragraph (b)(1)(i), remove the reference ‘‘-(ii)’’ at the end and add in its place ‘‘—.’’

**§ 35.3045 [Amended]**

■ 13. In § 35.3045, footnote 3, remove the telephone number ‘‘(301) 951–0550’’ and add in its place the telephone number ‘‘(301) 816–5100.’’

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

■ 14. The authority citation for part 40 continues to read as follows:

**Authority:** Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 275, 92 Stat. 3021, as amended by Pub. L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022); sec. 193, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–59, 119 Stat. 594 (2005).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 15. In § 40.5, revise the second sentence of paragraph (b)(2)(iv)(A) and the second sentence of paragraph (b)(2)(iv)(B) to read as follows:

**§ 40.5 Communications.**

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

(B) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

## PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005), secs. 147 and 149 of the Atomic Energy Act.

**Appendix A to Part 52—[Amended]**

■ 17. In Appendix A to part 52, paragraph III.A, last sentence, remove the zip code ‘‘20582’’ and add in its place the zip code ‘‘20852.’’

**Appendix B to Part 52—[Amended]**

■ 18. In Appendix B to part 52, paragraph III.A, last sentence, remove the zip code ‘‘20582’’ and add in its place the zip code ‘‘20852.’’

**Appendix C to Part 52—[Amended]**

■ 19. In Appendix C to part 52, paragraph III.A, last sentence, remove the zip code ‘‘20582’’ and add in its place the zip code ‘‘20852.’’

## PART 55—OPERATORS' LICENSES

■ 20. The authority citation for part 55 continues to read as follows:

**Authority:** Secs. 107, 161, 182, 68 Stat. 939, 948, 953, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2137, 2201, 2232, 2282); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 55.41, 55.43, 55.45, and 55.59 also issued under sec. 306, Pub. L. 97–425, 96 Stat. 2262 (42 U.S.C. 10226).

Section 55.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237).

■ 21. In § 55.5, revise the second sentence of paragraph (b)(2)(iv) to read as follows:

**§ 55.5 Communications.**

* * * * *

(b) * * *

(2) * * *

(iv) * * * Submission by mail or hand delivery must be addressed to the Administrator at U.S. Nuclear Regulatory Commission, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

* * * * *

## PART 60—DISPOSAL OF HIGH–LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

■ 22. The authority citation for part 60 continues to read as follows:

**Authority:** Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 594 (2005).

### § 60.2 [Amended]

■ 23. In § 60.2, the definition of ''NRC Public Document Room'':

■ a. In the first sentence, add the zip code ''20852'' after ''Maryland,''

■ b. In the second sentence, remove the term ''Electronic Reading Room'' and add in its place the term ''NRC Library''; and

■ c. In the fourth sentence, remove the email address ''*PDR@nrc.gov*'' and add in its place the email address ''*PDR.Resource@nrc.gov.*''

### § 60.75 [Amended]

■ 24. In § 60.75, paragraph (c)(2), third sentence, remove the word ''accomodate'' and add in its place the word ''accommodate.''

## PART 61—LICENSING REQUIREMENTS FOR LAND DISPOSAL OF RADIOACTIVE WASTE

■ 25. The authority citation for part 61 is revised to read as follows:

**Authority:** Secs. 53, 57, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2073, 2077, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, 95, 92 Stat. 2951 (42 U.S.C. 2021a and 5851) and 102, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

■ 26. The authority citation for part 70 continues to read as follows:

**Authority:** Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 193, 104 Stat. 2835 as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109–58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 70.81 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.82 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

■ 27. In § 70.5, revise the second sentence of paragraph (b)(2)(iv)(A) and the second sentence of paragraph (b)(2)(iv)(B) to read as follows:

### § 70.5 Communications.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

(A) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.*

(B) * * * All mailed or hand-delivered inquiries, communications, and applications for a new license or an amendment or renewal of an existing license specified in paragraph (b)(1) of this section must use the following address: U.S. Nuclear Regulatory Commission, Region IV, Division of Nuclear Materials Safety, 1600 E. Lamar Blvd., Arlington, TX 76011–4511; where email is appropriate, it should be addressed to *RidsRgn4MailCenter@nrc.gov.* * * *

## PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

■ 28. The authority citation for part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 149, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2169, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

■ 29. In Appendix A to Part 73, first table, second column, and second table, second column, revise the address for Region IV to read as follows:

### Appendix A to Part 73—U.S. Nuclear Regulatory Commission Offices and Classified Mailing Addresses

* * * * *

US NRC, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011–4511.

* * * * *

US NRC, Region IV, 1600 E. Lamar Blvd., Arlington, TX 76011–4511.

* * * * *

## PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 30. The authority citation for part 110 continues to read as follows:

**Authority:** Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 134, 161, 170H., 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2160d., 2201, 2210h., 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005; Pub. L. 109–58, 119 Stat. 594 (2005).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C.

553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

■ 31. Section 110.7, paragraph (b), is revised to read as follows:

**§ 110.7 Information collection requirements: OMB approval.**

* * * * *

(b) The approved information requirements contained in this part appear in §§ 110.7a, 110.27, 110.32, 110.50, 110.52, 110.53, and 110.54.

* * * * *

## PART 170—FEES FOR FACILITIES, MATERIALS IMPORT AND EXPORT LICENSES AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 32. The authority citation for part 170 continues to read as follows:

**Authority:** Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201(w)); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

**§ 170.31 [Amended]**

■ 33. In § 170.31, remove footnote 6 and the corresponding reference to footnote 6 in 15.M, 15.N, 15.O, 15.P, and 15.Q.

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY NRC

■ 34. The authority citation for part 171 continues to read as follows:

**Authority:** Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330 as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

■ 35. In § 171.16, paragraph (c), the table is revised to read as follows:

**§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.**

* * * * *

(c) * * *

| | Maximum annual fee per licensed category |
|---|---|
| Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years): | |
| $450,000 to $6.5 million | $2,300 |
| Less than $450,000 | 500 |
| Small Not-For-Profit Organizations (Annual Gross Receipts): | |
| $450,000 to $6.5 million | 2,300 |
| Less than $450,000 | 500 |
| Manufacturing entities that have an average of 500 employees or fewer: | |
| 35 to 500 employees | 2,300 |
| Fewer than 35 employees | 500 |
| Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population): | |
| 20,000 to 50,000 | 2,300 |
| Fewer than 20,000 | 500 |
| Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer: | |
| 35 to 500 employees | 2,300 |
| Fewer than 35 employees | 500 |

* * * * *

Dated at Rockville, Maryland, this 10th day of November 2011.

For the Nuclear Regulatory Commission.

**Cindy Bladey,**

*Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 2011–29669 Filed 11–21–11; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE313; Special Conditions No. 23–253–SC]**

## Special Conditions: Diamond Aircraft Industries, Model DA–40NG; Electronic Engine Control (EEC) System

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions.

**SUMMARY:** These special conditions are issued for the Diamond Aircraft Industries, Model DA–40NG airplane. This airplane will have a novel or unusual design feature(s) associated with an electronic engine control (EEC) also known as a Full authority Digital Engine Control (FADEC). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** *Effective Date:* October 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, (816) 329–4135, fax (816) 329–4090.

**SUPPLEMENTARY INFORMATION:**

### Background

On May 11, 2010, Diamond Aircraft Industry GmbH applied for an

amendment to Type Certificate No. A47CE to include the new model DA–40NG with the Austro Engine GmbH model E4 Aircraft Diesel Engine (ADE). The model DA–40NG, which is a derivative of the model DA–40 currently approved under Type Certificate No. A47CE, is a fully composite, four place, single-engine airplane with a cantilever low wing, T-tail airplane with the Austro Engine GmbH model E4 diesel engine and an increased maximum takeoff gross weight from 1150 kilograms (kg) to 1280 kg (2535 pounds (lbs) to 2816 lbs).

DAI will use an EEC instead of a traditional mechanical control system on the model DA–40NG airplane. The EEC is certified as part of the engine design certification, and the certification requirements for engine control systems are driven by 14 CFR part 33 certification requirements. The guidance for the part 33 EEC certification requirement is contained in two advisory circulars: Advisory Circular (AC) 33.28–1 and AC 33.28–2. The EEC certification, as part of the engine, addresses those aspects of the engine specifically addressed by part 33 and is not intended to address 14 CFR part 23 installation requirements. However, the guidance does highlight some of the aspects of installation that the engine applicant should consider during engine certification. The installation of an engine with an EEC system requires evaluation of environmental effects and possible effects on or by other airplane systems, including the part 23 installation aspects of the EEC functions. For example, the indirect effects of lightning, radio interference with other airplane electronic systems, and shared engine and airplane data and power sources.

The regulatory requirements in part 23 for evaluating the installation of complex electronic systems are contained in § 23.1309. However, when § 23.1309 was developed, the requirements of the rule were specifically excluded from applying to powerplant systems provided as part of the engine (reference § 23.1309(f)(1)). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the analysis would not be useful and not be complete because it would not include the effects of the aircraft supplied power and data failures on the engine control system, and the resulting effects on engine power/thrust. The integral nature of EEC installations require review of EEC functionality at the airplane level, as behavior acceptable for part 33 certification may not be acceptable for part 23 certification.

For over a decade, the Small Airplane Directorate has applied a special condition that required all EEC installations to comply with the requirements of § 23.1309(a) through (e). The rationale for applying § 23.1309 was that it was an existing rule that contained the best available requirements to apply to the installation of a complex electronic system; in this case, an EEC with aircraft interfaces. Additionally, special conditions for High Intensity Radiated Fields (HIRF) were also applied prior to the codification of § 23.1308.

There are several difficulties for propulsion systems directly complying with the requirements of § 23.1309. There are conflicts between the guidance material for § 23.1309 and propulsion system capabilities and failure susceptibilities. The following figure is an excerpt from AC 23.1309–1D.

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| **Classification of Failure Conditions** | **No Safety Effect** | **<----Minor---->** | **<----Major---->** | **<--Hazardous->** | **< Catastrophic>** |
|---|---|---|---|---|---|
| **Allowable Qualitative Probability** | **No Probability Requirement** | **Probable** | **Remote** | **Extremely Remote** | **Extremely Improbable** |
| Effect on Airplane | No effect on operational capabilities or safety | Slight reduction in functional capabilities or safety margins | Significant reduction in functional capabilities or safety margins | Large reduction in functional capabilities or safety margins | Normally with hull loss |
| Effect on Occupants | Inconvenience for passengers | Physical discomfort for passengers | Physical distress to passengers, possibly including injuries | Serious or fatal injury to an occupant | Multiple fatalities |
| Effect on Flight Crew | No effect on flight crew | Slight increase in workload or use of emergency procedures | Physical discomfort or a significant increase in workload | Physical distress or excessive workload impairs ability to perform tasks | Fatal Injury or incapacitation |
| **Classes of Airplanes:** | **Allowable Quantitative Probabilities and Software (SW) and Complex Hardware (HW) DALs (Note 2)** | | | | |
| **Class I** (Typically SRE under 6,000 lbs.) | No Probability or SW & HW DALs Requirement | $<10^{-3}$ Note 1 & 4 P=D, S=D | $<10^{-4}$ Notes 1 & 4 P=C, S=D P=D, S=D(Note 5) | $<10^{-5}$ Notes 4 P=C, S=D P=D, S=D(Note 5) | $<10^{-6}$ Note 3 P=C, S=C |
| **Class II** (Typically MRE, STE, or MTE under 6000 lbs.) | No Probability or SW & HW DALs Requirement | $<10^{-3}$ Note 1 & 4 P=D, S=D | $<10^{-5}$ Notes 1 & 4 P=C, S=D P=D, S=D(Note 5) | $<10^{-6}$ Notes 4 P=C, S=C P=D, S=D(Note 5) | $<10^{-7}$ Note 3 P=C, S=C |
| **Class III** (Typically SRE, STE, MRE, & MTE equal or over 6000 lbs.) | No Probability or SW & HW DALs Requirement | $<10^{-3}$ Note 1 & 4 P=D, S=D | $<10^{-5}$ Notes 1 & 4 P=C, S=D | $<10^{-7}$ Notes 4 P=C, S=C | $<10^{-8}$ Note 3 P=B, S=C |
| **Class IV** (Typically Commuter Category) | No Probability or SW & HW DALs Requirement | $<10^{-3}$ Note 1 & 4 P=D, S=D | $<10^{-5}$ Notes 1 & 4 P=C, S=D | $<10^{-7}$ Notes 4 P=B, S=C | $<10^{-9}$ Note 3 P=A, S=B |

Note 1: Numerical values indicate an order of probability range and are provided here as a reference. The applicant is usually not required to perform a quantitative analysis for minor and major failure conditions. See figure 3.
Note 2: The alphabets denote the typical SW and HW DALs for most primary system (P) and secondary system (S). For example, HW or SW DALs Level A on primary system is noted by P=A. See paragraphs 13 & 21 for more guidance.
Note 3: At airplane function level, no single failure will result in a catastrophic failure condition.
Note 4. Secondary system (S) may not be required to meet probability goals. If installed, S should meet stated criteria.
Note 5. A reduction of DALs applies only for navigation, communication, and surveillance systems if an altitude encoding altimeter transponder is installed and it provides the appropriate mitigations. See paragraphs 13 & 21 for more information.

BILLING CODE 4910–13–C

There is a conflict between the EEC system loss-of-thrust-control (LOTC), or loss-of-power-control (LOPC), probability per hour requirements given in part 33 guidance material and the failure rate requirements associated with the hazard created by a total loss of power/thrust as given in part 23 AC 23.1309–1D guidance. The part 33 requirements for engine control LOTC/LOPC probabilities are shown below:

| Engine type | Average LOTC/LOPC Events per million hours | Maximum LOTC/LOPC Events per million hours |
|---|---|---|
| Turbine Engine | 10 (1 × 10–05 per hour) | 100 (1 × 10–04 per hour). |
| Reciprocating Engine | 45 (4.5 × 10–05 per hour) | 450 (4.5 × 10–04 per hour). |

Note: See AC 33.28–1, AC 33.28–2 and ANE–1993–33.28TLD–R1 for further guidance.

The classification of the failure condition for LOTC/LOPC event on a single engine airplane ranges from Hazardous to Catastrophic. The classification of the failure condition for a single engine LOTC/LOPC event on a multi-engine airplane ranges from Major to Catastrophic. The classification of the failure condition for a multi-engine LOTC/LOPC event on a multi-engine airplane is Catastrophic. From the AC 23.1309–1D failure probability values, it is obvious that a single engine airplane EEC system will not be able to meet the failure probabilities as shown in the guidance material for § 23.1309. As a result, applicants have elected to declare a reduced hazard severity for a failure of the EEC system. This is not the intent of § 23.1309. The greater hazard severity should be associated with lower probabilities of failure, and higher probabilities of failure should not establish the lower hazard severities. There is also a conflict between the classification of the failure condition for a failure of an EEC system and the required test levels for the effects of lightning and high intensity radiated frequency (HIRF). Testing to a level lower than required for a catastrophic failure results in a lower level of safety than the mechanical system it replaces. This is contrary to the intent of certification requirements.

The advent of EEC also created/established the ability to dispatch with certain allowable loss of functionality and/or redundancy. This is known as Time-Limited Dispatch (TLD). The TLD allowable configurations must meet the specific risk LOTC/LOPC failure probabilities. FAA policy statement, ANE–1993–33.28TLD–R1, defines the full up and TLD allowable failure probabilities for turbine engines. The ability to use TLD is a risk management endeavor that uses a limited time period between inspection/maintenance intervals to mitigate the hazard. As such, the FAA has issued specific guidance for part 23 airplanes in addition to policy statement, ANE–1993–33.28TLD–R1, in order to adequately capture the necessary time limits between maintenance intervals. A means of compliance issue paper giving specific guidance can be generated, if desired, for the applicant.

The advent of EEC also led to incorporation of functions that, while not required by the CFRs, also introduce potentially catastrophic failure(s) and malfunction(s). Consequently, incorporation of these additional functions must be shown to retain part 23 levels of safety. These additional functions have included thrust management, portions of engine indication otherwise provided as part of the engine installation, engine speed synchronization, ignition control, auto-feather, etc.

The certification of an airplane to the standards of 14 CFR part 25 does not require the application of § 25.1309 via special condition to the EEC installation. In part 25, § 25.1309 is applicable to the powerplant installations in general and as a whole. The part 25 consequences differ from part 23 due to the required multi-engine configuration of part 25 airplanes. Additional applicable part 25, Subpart E requirements are those contained within § 25.901(b)(2) and (c).

There is language similar to part 25, § 25.901(c) contained in part 23, § 23.1141(e).The requirements contained within § 23.1141(e) were originally intended for the mechanical control interfaces on turbine engines. The rule was first promulgated at Amendment 23–7, effective on September 14, 1969. The preamble justifying the rule change states:

> *''This proposal would, in effect require that the need for system redundancy, alternate devices, and duplication of functions be determined in the design of turbine powerplant control systems.''*

The overall intent of the above cited rules is to provide a robust and fault tolerant engine control installation that ensures that no single failure or malfunction or probable combination of failures will jeopardize the safe operation of the airplane.

Given the unique requirements of an EEC installation, and the lack of specific regulatory requirements, a special condition will be applied to all EEC installations in part 23 airplanes. This special condition is not applicable to the part 33 engine certification requirements, and it specifically excludes any part 33 references. Compliance with this special condition may necessitate changes to the EEC, and may require additional part 33 compliance showings. In like manner, changes to the EEC at the part 33 level may require additional compliance showings to this special condition. The overall intent of this special condition is to leverage off of the part 33 compliance as much as possible and address the airplane level effects of an EEC installation.

The EEC system includes all of the subsystems on the aircraft that interface with the EEC and provide aircraft data and electrical power. This special condition is applicable to and includes all functions of the EEC system that have an effect at the airplane level. An example of this is control of the turbine engine compressor variable geometry (VG): the VG function in itself is not an airplane function, but changes to the VG scheduling will require re-substantiating compliance to part 23 requirements, such as § 23.939.

The components that should be considered part of the EEC system are defined in Society of Automotive Engineers (SAE) document, Aerospace Recommended Practice (ARP) 5107B, Guidelines for Time-Limited-Dispatch (TLD) Analysis for Electronic Engine Control Systems, section 6.4. This guidance is intended for turbine engine installations; however, the intent is applicable to piston engine installations. A means of compliance issue paper giving specific guidance can be generated, if desired, for the applicant.

Part 33 certification data, if applicable, may be used to show compliance with the requirements of part 23 installation requirements; however, compliance with the part 33 requirements does not constitute compliance with the requirements of part 23, nor automatically imply that the engine is installable on a part 23 airplane. The part 23 applicant is required to show compliance in accordance with part 21. If part 33 data is to be used, then the part 23 applicant must be able to provide this data for their showing of compliance to the part 23 requirements.

**Type Certification Basis**

Under the provisions of § 21.101, DAI must show that the model DA–40NG meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. A47CE or the applicable regulations in effect on the date of application for the change to the model DA–40. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the model DA–40NG because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the model DA–40NG must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as appropriate, as defined in § 11.19, under § 11.38, and they become part of the type certification basis under § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The model DA–40NG will incorporate the following novel or unusual design features: Electronic engine control system.

**Discussion**

As discussed above, these special conditions are applicable to the model DA–40NG. Should DAI apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model.

**Discussion of Comments**

Notice of proposed special conditions No. 23–10–03–SC for the Diamond Aircraft Industries, model DA–40NG, airplane was published on September 7, 2011 (76FR 55293). No comments were received, and the special conditions are adopted as proposed.

**Applicability**

As discussed above, these special conditions are applicable to the model DA–40NG. Should DAI apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Diamond Aircraft Industries (DAI), model DA–40NG airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

**Conclusion**

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Diamond Aircraft Industry GmbH model DA–40NG with the installation of the Austro Engine GmbH model E4 aircraft diesel engine.

*1. Electronic Engine Control*

a. For electronic engine control system installations, it must be established that no single failure or malfunction or probable combinations of failures of Electronic Engine Control (EEC) system components will have an effect on the system, as installed in the airplane, that causes the loss-of-thrust-control (LOTC), or loss-of-power-control (LOPC) probability of the system to exceed those allowed in part 33 certification.

b. Electronic engine control system installations must be evaluated for environmental and atmospheric conditions, including lightning. The EEC system lightning and High-Intensity Radiated Fields (HIRF) effects that result in LOTC/LOPC should be considered catastrophic.

c. The components of the installation must be constructed, arranged, and installed so as to ensure their continued safe operation between normal inspections or overhauls.

d. Functions incorporated into any electronic engine control that make it part of any equipment, systems or installation whose functions are beyond that of basic engine control, and which may also introduce system failures and malfunctions, are not exempt from § 23.1309 and must be shown to meet part 23 levels of safety as derived from § 23.1309. Part 33 certification data, if applicable, may be used to show compliance with any part 23 requirements. If part 33 data is to be used to substantiate compliance with part 23 requirements, then the part 23 applicant must be able to provide this data for their showing of compliance.

**Note:** The term ''probable'' in the context of ''probable combination of failures'' does not have the same meaning as in AC 23.1309–1D. The term ''probable'' in ''probable combination of failures'' means ''foreseeable,'' or (in AC 23.1309–1D terms), ''not extremely improbable.''

Issued in Kansas City, Missouri on October 28, 2011.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–28616 Filed 11–21–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–1037; Directorate Identifier 2011–NE–30–AD; Amendment 39–16872; AD 2011–24–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca S.A. Makila 1A2 Turboshaft Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A helicopter experienced an inadvertent activation of the 65% N1 (gas generator speed) back up control mode.

The subsequent technical investigations carried by Turbomeca revealed that an N2 (power turbine speed) sensor harness wire crimping discrepancy was at the origin of this event. Further quality investigations performed with the supplier led to the conclusion that N2 sensor Part Number (P/N) 0 301 52 001 0 whose Serial Numbers (S/N) are between S/N 242 and S/N 339 inclusive are potentially concerned by the same manufacturing discrepancy.

This condition, if not corrected, could lead to the inadvertent activation of the 65% N1 back up mode and consequently to significant power loss on one or more or both engines installed on the same helicopter, potentially resulting in an emergency landing of the helicopter.

We are issuing this AD to prevent inadvertent activation of the backup control mode, which could result in engine power loss and emergency landing of the helicopter.

**DATES:** This AD becomes effective December 7, 2011.

We must receive comments on this AD by December 22, 2011.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *email: james.lawrence@faa.gov; phone:* (781) 238–7176; *fax:* (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, issued EASA Airworthiness Directive 2011–0147, dated August 5, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A helicopter experienced an inadvertent activation of the 65% N1 (gas generator speed) back up control mode.
>
> The subsequent technical investigations carried by Turbomeca revealed that an N2 (power turbine speed) sensor harness wire crimping discrepancy was at the origin of this event. Further quality investigations performed with the supplier led to the conclusion that N2 sensor Part Number (P/N) 0 301 52 001 0 whose Serial Numbers (S/N) are between S/N 242 and S/N 339 inclusive are potentially concerned by the same manufacturing discrepancy.
>
> This condition, if not corrected, could lead to the inadvertent activation of the 65% N1 back up mode and consequently to significant power loss on one or more or both engines installed on the same helicopter, potentially resulting in an emergency landing of the helicopter.
>
> For the reasons described above, this AD requires replacement of affected N2 sensor harnesses with serviceable parts. This AD also prohibits the installation of non serviceable N2 sensor harnesses on an engine.

You may obtain further information by examining the MCAI in the AD docket.

### Relevant Service Information

Turbomeca has issued Service Bulletin 298 77 0817, Version B, dated August 23, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

### FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This AD requires replacement of the affected N2 sensor harnesses with N2 sensor harnesses eligible for installation.

### FAA's Determination of the Effective Date

Since no domestic operators use this product, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we are adopting this regulation immediately.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1037; Directorate Identifier 2011–NE–30–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

### 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.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2011–24–08 Turbomeca S.A.:** Amendment 39–16872; Docket No. FAA–2011–1037; Directorate Identifier 2011–NE–30–AD.

**(a) Effective Date**

This airworthiness directive (AD) becomes effective December 7, 2011.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Makila 1A2 turboshaft engines, all serial numbers.

**(d) Reason**

(1) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A helicopter experienced an inadvertent activation of the 65% N1 (gas generator speed) back up control mode.

The subsequent technical investigations carried by Turbomeca revealed that an N2 (power turbine speed) sensor harness wire crimping discrepancy was at the origin of this event. Further quality investigations performed with the supplier led to the conclusion that N2 sensor Part Number (P/N) 0 301 52 001 0 whose Serial Numbers (S/N) are between S/N 242 and S/N 339 inclusive are potentially concerned by the same manufacturing discrepancy.

This condition, if not corrected, could lead to the inadvertent activation of the 65% N1 back up mode and consequently to significant power loss on one or more or both engines installed on the same helicopter, potentially resulting in an emergency landing of the helicopter.

(2) We are issuing this AD to prevent inadvertent activation of the backup control mode, which could result in engine power loss and emergency landing of the helicopter.

**(e) Actions and Compliance**

(1) Unless already done, do the following actions.

(2) For engines equipped with N2 sensor harnesses, P/N 0 301 52 001 0, whose S/Ns are between S/N 242 and S/N 339 inclusive, do the following:

(i) If an affected P/N is installed on each of the 2 (two) engines of the helicopter, then within 10 flight hours (FHs) after the effective date of this AD, replace one N2 sensor harness with an N2 sensor harness that is eligible for installation, and within 50 FHs after the effective date of this AD, replace the second harness with an N2 sensor harness that is eligible for installation.

(ii) If an affected P/N is installed only on 1 (one) engine of the helicopter, then within 50 FHs after the effective date of this AD, replace the affected N2 sensor harness with an N2 harness that is eligible for installation.

(3) After the effective date of this AD, do not install in an engine any N2 sensor harness, P/N 0 301 52 001 0, whose S/N is between S/N 242 and S/N 339 inclusive, unless the part has ''SB 0815'' marked on the identification plate.

(4) After the effective date of this AD, do not install in a helicopter an engine equipped with an N2 sensor harness, P/N 0 301 52 001 0, whose S/N is between S/N 242 and S/N 339 inclusive, unless the part has ''SB 0815'' marked on the identification plate.

**(f) Alternative Methods of Compliance (AMOCs)**

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

**(g) Related Information**

(1) Refer to MCAI EASA AD 2011–0147, dated August 5, 2011, and Turbomeca Service Bulletin No. 298 77 0817, for related information. Contact Turbomeca; 40220 Tarnos, France; *phone:* 33–05–59–74–40–00; *fax:* 33–05–59–74–45–11; for a copy of this service information.

(2) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *email: james.lawrence@faa.gov; phone:* (781)–238–7176; *fax:* (781) 238–7199, for more information about this AD.

**(h) Material Incorporated by Reference**

None.

Issued in Burlington, Massachusetts, on November 9, 2011.

**Peter A. White,**

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

[FR Doc. 2011–30061 Filed 11–21–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2010–1016; Airspace Docket No. 11–ACE–6]**

**RIN 2120–AA66**

## Amendment of VOR Federal Airways V–81, V–89, and V–169 in the Vicinity of Chadron, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends the legal description of the VHF omnidirectional range (VOR) Federal airways V–81, V–89, and V–169 in the vicinity of Chadron, Nebraska. The FAA is taking this action because the Chadron VOR distance measuring equipment (DME), included as part of the V–81, V–89, and V–169 route structure, is being renamed the Toadstool VOR/DME to avoid confusion with Chadron Airport that shares the same identifier.

**DATES:** *Effective Dates:* 0901 UTC, April 5, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

**SUPPLEMENTARY INFORMATION:**

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of VOR Federal Airways V–81, V–89, and V–169, in the vicinity of Chadron, NE. Currently, V–81, V–89, and V–169 include the Chadron, NE, [VOR/DME] as part of their route structure. The Chadron VOR/DME and the Chadron Airport share the same name and identifier (CDR), but are located nineteen nautical miles apart. A navigation facility and airport having the same name and identifier causes frequent confusion to air traffic automation systems, as well as pilot/controller communications. To eliminate confusion, and a potential flight safety issue, the Chadron VOR/DME is renamed the Toadstool VOR/DME and assigned a new facility identifier (TST). All VOR Federal

airways with Chadron, NE, [VOR/DME] included in their legal description are amended to reflect the Toadstool, NE, [VOR/DME] name change. The name change of the VOR/DME will coincide with the effective date of this rule.

Additionally, the exclusionary language in the V–169 legal description addressing the Devils Lake West Military Operations Area (MOA) has been simplified for clarity. No changes to the current operational use are expected to occur from this editorial amendment.

Since this action merely involves editorial changes in the legal descriptions of VOR Federal airways, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revises the legal description of four VOR Federal Airways in the vicinity of Chadron, NE.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The domestic VOR Federal Airways listed in this document will be published subsequently in the Order.

### Environmental Review

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

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

*Paragraph 6010(a)—Domestic VOR Federal Airways*

* * * * *

**V–81 [Amended]**

From Chihuahua, Mexico; Marfa, TX; Fort Stockton, TX; Midland, TX; Lubbock, TX; Plainview, TX; Panhandle, TX; Dalhart, TX; Tobe, CO; Pueblo, CO; Black Forest, CO; Jeffco, CO; Cheyenne, WY; Scottsbluff, NE; to Toadstool, NE. The airspace outside the United States is excluded.

* * * * *

**V–89 [Amended]**

From Gill, CO; INT Gill 003° and Cheyenne, WY, 131° radials; Cheyenne; to Toadstool, NE.

* * * * *

**V–169 [Amended]**

From Tobe, CO; 69 MSL, Hugo, CO; 38 miles, 67MSL, Thurman, CO; Akron, CO; Sidney, NE; Scottsbluff, NE; Toadstool, NE; Rapid City, SD; Dupree, SD; Bismarck, ND; to Devils Lake, ND. The airspace within the Devils Lake West MOA is excluded when activated by NOTAM.

* * * * *

Issued in Washington, DC on November 14, 2011.

**Gary A. Norek,**

*Acting Manager, Airspace, Regulations and ATC Procedures Group.*

[FR Doc. 2011–29895 Filed 11–21–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 95

**[Docket No. 30814; Amdt. No. 497]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**DATES:** *Effective Date:* 0901 UTC, December 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rick Dunham, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail addresses: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes,

ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

## Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on November 11, 2011.

**John McGraw,**

*Deputy Director, Flight Standards Service.*

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, December 15, 2011.

## PART 95—IFR ALTITUDES

■ 1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

**REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS AMENDMENT 497 EFFECTIVE DATE December 15, 2011**

| From | To | MEA |
|---|---|---|
| **&95.6001 Victor Routes-U.S.** | | |
| **&95.6014 VOR Federal Airway V14 is Amended to Read in Part** | | |
| Will Rogers, OK VORTAC | Totes, OK FIX | 3700 |
| Drops, OK FIX | Tulsa, OK VORTAC. | |
| | NE BND | 2800 |
| | SW BND | 3800 |
| **&95.6017 VOR Federal Airway V17 is Amended to Read in Part** | | |
| Fator, TX FIX | *Nelee, TX FIX | **4000 |
| *5500–MRA. | | |
| **2800–MOCA. | | |
| Centex, TX VORTAC | Waco, TX VORTAC | 3600 |
| **&95.6054 VOR Federal Airway V54 is Amended to Read in Part** | | |
| Sandhills, NC VORTAC | *RAEFO, NC FIX | **6000 |
| *6000–MRA. | | |
| **2000–MOCA. | | |
| **3000–GNSS MEA. | | |
| *Raefo, NC FIX | Fayetteville, NC VOR/DME | **2800 |
| *6000–MRA. | | |
| **1900–MOCA. | | |
| **&95.6104 VOR Federal Airway V104 Is Amended to Read in Part** | | |
| Malae, NY FIX | Plattsburgh, NY VORTAC | *7000 |
| *6100–MOCA. | | |
| *6100–GNSS MEA. | | |
| **&95.6113 VOR Federal Airway V113 is Amended to Read in Part** | | |
| Helena, MT VORTAC | Lewistown, MT VOR/DME | 11100 |
| **&95.6137 VOR Federal Airway V137 is Amended to Read in Part** | | |
| Palmdale, CA VORTAC | Vicky, CA FIX | *8000 |
| *5800–MOCA. | | |
| Vicky, CA FIX | Jeffy, CA FIX. | |
| | E BND | 8000 |
| | W BND | 9000 |
| Jeffy, CA FIX | Gorman, CA VORTAC. | |
| | E BND | 8000 |

| From | To | MEA |
|---|---|---|
| | W BND | 10100 |
| **&95.6271 VOR Federal Airway V271 is Amended to Read in Part** | | |
| Muskegon, MI VORTAC<br>*2500–MOCA. | WELKO, MI FIX | *3000 |
| Welko, MI FIX<br>*2400–MOCA. | Manistee, MI VOR/DME | *4000 |
| **&95.6276 VOR Federal Airway V276 is Amended to Read in Part** | | |
| Manta, NJ FIX<br>*8000–MRA.<br>**2000–MOCA.<br>**3000–GNSS MEA. | *Prepi, OA FIX | **6000 |
| **&95.6287 VOR Federal Airway V287 is Amended to Read in Part** | | |
| Fort Jones, CA VOR/DME<br>*9800–MOCA. | Klama, OR FIX | *12000 |
| Klama, OR FIX<br>*7000–MCA Rogue Valley, OR VORTAC, SE BND. | *Rogue Valley, OR VORTAC.<br>SE BND<br>NW BND | <br>12000<br>8000 |
| **&95.6296 VOR Federal Airway V296 is Amended to Read in Part** | | |
| Hustn, NC FIX<br>*6000–MRA.<br>**2300–MOCA.<br>**2400–GNSS MEA. | *Raefo, NC FIX | **5000 |
| *Raefo, NC FIX<br>*6000–MRA.<br>**1900–MOCA. | Fayetteville, NC VOR/DME | **2800 |
| **&95.6465 VOR Federal Airway V465 is Amended to Read in Part** | | |
| Miles City, MT VOR/DME<br>*5200–MOCA.<br>*6000–GNSS MEA. | Williston, ND VORTAC | *7000 |
| **&95.6545 VOR Federal Airway V545 is Amended to Read in Part** | | |
| Miles City, MT VOR/DME<br>*5300–MOCA.<br>*6000–GNSS MEA. | Williston, ND VORTAC | *7000 |
| **&95.6319 ALASKA VOR Federal Airway V319 is Amended to Read in Part** | | |
| Vidda, AK FIX<br>*2100–MOCA. | Weeke, AK FIX.<br>SW BND<br>NE BND | <br>*3000<br>*6000 |
| **&95.6440 ALASKA VOR Federal Airway V440 is Amended to Read in Part** | | |
| Yucon, AK FIX | Unalakleet, AK VOR/DME.<br>W BND<br>E BND | <br>4600<br>8000 |
| **&95.6423 HAWAII VOR Federal Airway V23 is Amended to Read in Part** | | |
| Jessi, HI FIX<br>*13000–MRA. | *Fires, HI FIX | 8000 |

| From | To | MEA | MAA |
|---|---|---|---|
| **&95.7001 JET ROUTES**<br>**&95.7037 Jet Route J37 is Amended to Read in Part** | | | |
| Brooke, VA VORTAC | Nales, DE FIX | 18000 | 31000 |

| From | To | MEA | MAA |
|---|---|---|---|
| **&95.7060 Jet Route J60 is Amended to Read in Part** | | | |
| Philipsburg, PA VORTAC | Sparta, NJ VORTAC | 18000 | 45000 |
| **&95.7204 Jet Route J204 is Amended to Read in Part** | | | |
| Miles City, MT VOR/DME | Hilgr, MT FIX | 19000 | 45000 |
| Hilgr, MT FIX | Great Falls, MT VORTAC | 18000 | 45000 |

| Airway Segment | | Changeover Points | |
|---|---|---|---|
| From | To | Distance | From |
| **&95.8003 VOR Federal Airway Changeover Points V104 is Amended to Add Changeover Point** | | | |
| Massena, NY VORTAC | Plattsburgh, NY VORTAC | 16 | Massena |
| **V271 is Amended to Add Changeover Point** | | | |
| Muskegon, MI VORTAC | Manistee, MI VOR/DME | 37 | Muskegon |

[FR Doc. 2011–30096 Filed 11–21–11; 8:45 am]

BILLING CODE 4910–13–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[EPA–HQ–OAR–2009–0443; FRL–9492–3]**

**RIN 2060–AR17**

## Air Quality Designations for the 2008 Lead (Pb) National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes air quality designations for most areas in the United States for the 2008 lead (Pb) National Ambient Air Quality Standards (NAAQS). In a previous action established on November 16, 2010, the EPA designated as ''nonattainment'' 16 areas as violating the 2008 Pb NAAQS based on data from the pre-2010 monitoring network. For all other areas, the EPA deferred action so that data from newly deployed monitors could be considered in making appropriate designation decisions. In this action, the EPA is designating all remaining areas of the United States, including Indian country. The Clean Air Act (CAA) requires areas designated nonattainment by this rule to undertake certain planning and pollution control activities to attain the standards as quickly as reasonably possible.

**DATES:** *Effective Date:* The effective date of this rule is December 31, 2011.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID NO. EPA–HQ–OAR–2009–0443. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, 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 in the docket or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, the EPA has established a Web site for this rulemaking at: *http://www.epa.gov/leaddesignations/2008standards/index.html.* The Web site includes the EPA's final state and tribal designations, as well as state initial recommendation letters, the EPA modification letters, technical support documents, responses to comments, and other related technical information.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Wright, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–04, Research Triangle Park, N.C. 27711, phone number (919) 541–1087 or by email at: *wright.rhonda@epa.gov.*

**Regional Office Contacts**

Region 1—Robert McConnell (617) 918–1046,
Region 2—Mazeeda Khan (212) 637–3715,
Region 3—Melissa Linden (215) 814–2096,
Region 4—Steve Scofield (404) 562–9034,
Region 5—Andy Chang (312) 886–0258,
Region 6—Terry Johnson (214) 665–2154,
Region 7—Stephanie Doolan (913) 551–7719,
Region 8—Kevin Leone (303) 312–6227,
Region 9—Ginger Vagenas (415) 972–3964,
Region 10—Steve Body (206) 553–0782.

**SUPPLEMENTARY INFORMATION:** The public may inspect the rule and state-specific technical support information at the following locations:

| Regional offices | States |
|---|---|
| Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661. | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. |
| Raymond Werner, Chief, Air Programs Branch, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706. | New Jersey, New York, Puerto Rico, and Virgin Islands. |

| Regional offices | States |
|---|---|
| Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2178. | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. |
| Scott R. Davis, Branch Chief, Air Planning Branch, EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth, Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562–9127. | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee. |
| John Mooney, Chief, Air Programs Branch, EPA Region 5, 77 West Jackson Street, Chicago, IL 60604, (312) 886–6043. | Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. |
| Guy Donaldson, Chief, Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7242. | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas. |
| Joshua A. Tapp, Chief, Air Programs Branch, EPA Region 7, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606. | Iowa, Kansas, Missouri, and Nebraska. |
| Monica Morales, Leader, Air Quality Planning Unit, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6936. | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. |
| Lisa Hanf, Air Planning Office, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3854. | American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Northern Mariana Islands. |
| Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region 10, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6985. | Alaska, Idaho, Oregon, and Washington. |

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## I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
AQS Air Quality System
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
DC District of Columbia
EO Executive Order
EPA Environmental Protection Agency
FR **Federal Register**
FEM Federal Equivalent Method
FRM Federal Reference Method
IQ Intelligence Quotient
NAAQS National Ambient Air Quality Standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
Pb Lead
PM Particulate Matter
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
SBA Small Business Administration
SIP State Implementation Plan
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
TSD Technical Support Document
TSP Total Suspended Particulate
TPY Tons Per Year
U.S. United States
VCS Voluntary Consensus Standards

## II. What is the purpose of this document?

The purpose of this action is to promulgate and announce designations and boundaries for areas of the country for the 2008 Pb NAAQS based on available information, in accordance with the requirements of the CAA. All area designations for each state, and the boundaries for each area, appear in the table at the end of this final rule. The EPA has been working closely with the states involved in these designations and has taken several steps to announce that this rule is available. The EPA has posted the notice on the EPA's designations Web site and provided a copy of the rule to those states with nonattainment areas.

This notice identifies the five areas being designated as nonattainment areas for the 2008 Pb NAAQS. These five areas surround violating monitors in Arecibo, Puerto Rico; Chicago, Illinois; Belding, Michigan; Saline, Kansas; and Pottawattamie, Iowa. The basis for designating these areas as nonattainment areas is monitored air quality data from calendar years 2008–2010 indicating violations of the NAAQS. For these areas being designated nonattainment, states must develop a State Implementation Plan (SIP) that meets the requirements of section 172(c) and subpart 5 of Part D of the CAA, including providing for attainment of the NAAQS as expeditiously as practicable, but no later than December 31, 2016. These SIPs must be submitted to the EPA within 18 months of the effective date of these designations, *i.e.,* by June 30, 2013.[1]

This notice also identifies the expansion of the boundary of one nonattainment area—the Lower Beaver Valley nonattainment area in Pennsylvania—that was designated nonattainment on November 16, 2010. The expansion incorporates additional land area that the EPA has determined does not meet the 2008 Pb NAAQS. This action does not affect the required attainment date or SIP submission deadline for this nonattainment area.

The EPA is designating three areas (Knox County, Tennessee; an area

[1] In addition, as discussed in the proposed and final Pb NAAQS rules, all states are required to submit SIPs pursuant to section 110(a)(1) (''infrastructure SIPs'') within 3 years of promulgation of the new standard.

surrounding Hayden, Arizona; and Orange County, New York) as unclassifiable on the basis that there are available monitoring data from recent periods indicating a significant likelihood that the areas may be violating the 2008 Pb NAAQS, but the available information is insufficient at this time to make nonattainment designations. In the 2008 Pb NAAQS rule, the EPA required new monitors to be sited near sources emitting more than one ton per year or more beginning in 2010 and in certain non-source oriented locations by December 27, 2011.[2] Due to the timing of monitor siting, monitoring data are available for the first several months of 2011 for some sites with no 2008–2010 data, two of which have data in AQS that exceed the standard (Knox County, Tennessee and Hayden, Arizona). A previously established monitor in the Orange County, New York, area also has data in AQS from early 2011 that exceed the standard. Because of the form of the 2008 Pb NAAQS, one 3-month average ambient air concentration over 0.15 micorgrams per cubic meter (μg/m$^3$) is enough to cause a violation of the Pb NAAQS. However, before the EPA can finalize nonattainment designation for these areas, the data that were reported to AQS must be quality assured and certified and appropriate nonattainment area boundaries must be defined for the areas. Therefore, the EPA is designating these three areas as unclassifiable until this process can be completed.

The EPA received a recommendation on behalf of the Governor of Arizona with recommended boundaries for an area surrounding Hayden, Arizona, and the EPA is designating that area as unclassifiable consistent with that recommendation. Consistent with the EPA's view that the perimeter of a county containing a violating monitor is the initial presumptive boundary for nonattainment areas, the EPA is designating the entirety of Orange County, New York, and Knox County, Tennessee, as unclassifiable. However, the EPA recognizes that experience with other initial designations for the Pb NAAQS has indicated that where a NAAQS violation is attributable to a single source, area-specific analyses have served as a basis for designating a nonattainment area that is smaller than the county. Accordingly, before redesignating these two areas as nonattainment and consistent with the CAA, the EPA intends to work with the states to identify specific boundaries that appropriately encompass violating areas and any areas contributing to violations in these counties. The boundaries of any nonattainment area may well be smaller than the county boundaries, and in such case the EPA anticipates that the remainder of these two counties would be redesignated unclassifiable/attainment. The EPA notes that, although it is designating these three areas as ''unclassifiable'' to reflect the recent monitoring data, there are no additional planning or control requirements that apply as a result of an unclassifiable designation, as compared to a designation of ''unclassifiable/attainment.''

All other areas of the country are being designated as unclassifiable/attainment, meaning the available information does not indicate that the air quality in these areas exceeds the 2008 Pb NAAQS.

When the EPA issued the 2008 Pb NAAQS, we provided that the 1978 Pb NAAQS would be revoked 1 year after the effective date of designations for the 2008 NAAQS, except in areas designated nonattainment for the 1978 NAAQS where the standard will remain in effect until a SIP is approved for the new standard. There are two areas designated nonattainment for the 1978 NAAQS: Herculaneum, Missouri, and East Helena, Montana. Herculaneum was designated nonattainment for the 2008 standard in 2010, and thus the 1978 standard will remain in effect until an attainment SIP for the 2008 NAAQS is approved by the EPA. East Helena is being designated unclassifiable/attainment for the 2008 standard in this action, and the 1978 standard will remain in effect until a maintenance SIP for the 2008 NAAQS is approved by the EPA. For all other areas designated in this action, the 1978 standard is revoked as of December 31, 2012.

In addition to making designations for the 2008 Pb NAAQS, the EPA is also revising 40 CFR part 81 to clarify the presentation of designations for the 1978 standard and the 2008 standard and to correct certain inadvertent errors concerning the 1978 standard. In making designations for the 2008 standard last year, the EPA inadvertently changed certain information in part 81 for the 1978 standard, such as identifying areas that had been designated ''unclassifiable'' as ''attainment,'' identifying areas that were not designated at all as ''unclassifiable,'' or including the wrong effective date for a designation.[3] Although these errors have no practical effect, and the 1978 standard will be revoked for all but two areas by December 31, 2012, the EPA did not intend to alter any designations for the 1978 standard in making designations for the 2008 standard and is thus correcting the errors to ensure that part 81 reflects the proper designations for the 1978 standard.

## III. What is lead?

Lead (Pb) is a metal found naturally in the environment and present in some manufactured products. The major sources of Pb air emissions were historically motor vehicles (such as cars and trucks) and industrial sources. Motor vehicles emissions of Pb have been dramatically reduced with the phase-out of leaded gasoline, but Pb is still used as an additive in general aviation gasoline used in piston-engine aircraft and remains a trace contaminant in other fuels. Large industrial sources of Pb emissions currently include metals processing, particularly primary and secondary Pb smelters. Lead is also emitted from sources such as: Iron and steel foundries; primary and secondary copper smelters; industrial, commercial, and institutional boilers; waste incinerators; glass manufacturing; and cement manufacturing.

## IV. What are the health and welfare concerns addressed by the Pb standards?

Lead is generally emitted in the form of particles, which can end up being deposited in water, soil, and dust. People may be exposed to Pb by inhaling it, or by ingesting lead-contaminated food, water, soil, or dust. Once in the body, Pb is quickly absorbed into the bloodstream and can result in a broad range of adverse health effects. These may include damage to the central nervous system, cardiovascular function, kidneys, immune system, and red blood cells. Children are particularly vulnerable to Pb exposure, in part because they are more likely to ingest Pb and in part because their still-developing bodies are more sensitive to the effects of Pb. The harmful effects to children's developing nervous systems (including their brains) arising from Pb exposure may include intelligence quotient (IQ) loss, poor academic achievement, long-term learning disabilities, and an increased risk of delinquent behavior.

Lead is persistent in the environment and accumulates in soils and sediments through deposition from air sources, direct discharge of waste streams to water bodies, mining, and erosion. Ecosystems near some longstanding

[2] EPA subsequently revised these requirements, including by lowering the emission threshold for source-oriented monitoring to 0.5 tpy. *See* 75 FR 81127 (Dec. 27, 2010).

[3] No areas were inadvertently identified as ''nonattainment.''

point sources of Pb demonstrate a wide range of adverse effects including losses in biodiversity, changes in community composition, decreased growth and reproductive rates in plants and animals, and neurological effects in vertebrates.

**V. What are the CAA requirements for air quality designations and what action has the EPA taken to meet these requirements?**

After the promulgation of a new or revised NAAQS, the EPA is required to designate areas as nonattainment, attainment, or unclassifiable, pursuant to section 107(d)(1) of the CAA. The Administrator signed a final rule revising the Pb NAAQS on October 15, 2008, which was published in the **Federal Register** on November 12, 2008, and became effective January 12, 2009. Based on the Administrator's review of the scientific evidence, including numerous studies published since the last review of the Pb NAAQS, and taking into consideration the comments expressed by the Clean Air Scientific Advisory Committee and the public, the Administrator revised the standard from a level of 1.5 $\mu g/m^3$ to a level of 0.15 $\mu g/m^3$. In addition, the Administrator changed the averaging time and form to a maximum rolling 3-month average evaluated over a 3-year period. The rule also established new requirements for Pb monitoring networks, including the requirement that new Pb monitors be located in close proximity to the largest Pb emissions sources by January 1, 2010.

The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires the EPA to complete the initial area designation process within 2 years of promulgating a new or revised NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, the EPA has the authority to extend the designation process by up to 1 additional year. By not later than 1 year after the promulgation of a new or revised NAAQS, each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA. Tribes are not required to submit recommendations, but the EPA encourages their participation in the designations process. The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term ''necessary,'' but the EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by the EPA. If the EPA is considering modifications to a state's initial recommendation, the EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to the EPA's promulgation of the final designation. If the state does not agree with the EPA's modification, it then has an opportunity to respond to the EPA and to demonstrate why it believes the modification proposed by the EPA is inappropriate, as contemplated by section 107(d)(1)(B)(ii). Even if a state fails to provide any recommendation for an area, in whole or in part, the EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to section 107(d)(1)(B)(ii).

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as any area that does not meet an ambient air quality standard or that is contributing to ambient air quality in a nearby area that does not meet the standard. If an area meets either prong of this definition, then the EPA is obligated to designate the area as ''nonattainment.'' Section 107(d)(1)(A)(iii) provides that any area that the EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated as ''unclassifiable.''

The EPA believes that section 107(d) provides the agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (*e.g.,* ''contributes to'' and ''nearby'') for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, the EPA believes that the statute does not require the agency to establish bright line tests or thresholds for what constitutes contribution or nearby for purposes of designations.[4]

Similarly, the EPA believes that the statute permits the EPA to evaluate the appropriate application of the term ''area'' to include geographic areas based upon full or partial county boundaries, and contiguous or non-contiguous areas, as may be appropriate for a particular NAAQS. For example, section 107(d)(1)(B)(ii) explicitly provides that the EPA can make modifications to designation recommendations for an area ''or portions thereof,'' and, under section 107(d)(1)(B)(iv), a designation remains in effect for an area ''or portion thereof'' until the EPA redesignates it.

Designation activities for federally-recognized tribes are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes the EPA to treat eligible tribes in a similar manner as states. Pursuant to section 301(d)(2), we promulgated regulations, known as the Tribal Authority Rule (TAR), on February 12, 1999. 63 FR 7254, codified at 40 CFR part 49 (1999). That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from the EPA a determination of eligibility for such treatment. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA. In addition, CAA section 301(d)(4) gives the EPA discretionary authority, in cases where it determines that treatment of tribes as identical to states is ''inappropriate or administratively infeasible,'' to provide for direct administration by regulation to achieve the appropriate purpose.

To date, one tribe has applied under the TAR for eligibility to submit its own recommendations under section 107(d). Nonetheless, the EPA invited all tribes to submit recommendations concerning designations for the 2008 Pb NAAQS. The EPA worked with the tribes that requested an opportunity to submit designation recommendations. Tribes were provided an opportunity to submit their own recommendations and supporting documentation and could also comment on state recommendations and the EPA modifications.

In light of the new Pb monitoring network, the EPA planned to complete the initial area designations for Pb in two rounds. Designation recommendations and supporting documentation were previously submitted by most states and a few tribes to the EPA by October 15, 2009. In the first round, established on November 16, 2010, the EPA designated

[4] This view was confirmed in *Catawba County* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).

as ''nonattainment'' 16 areas as violating the 2008 Pb NAAQS based on 2007–2009 air quality data from the pre-2010 monitoring network. For all other areas, the EPA extended the deadline for designations by up to 1 year so that data from the newly deployed monitors can be considered in making appropriate designation decisions.

For the second round of designations, states and tribes were given an opportunity to update their recommendation letters, for these remaining areas, by December 15, 2010. After receiving recommendations from states and tribes, and after reviewing and evaluating each recommendation, the EPA provided a response to the states and tribes on June 15, 2011. In these letter responses, we indicated whether the EPA intended to make modifications to the initial state or tribal recommendations and explained the EPA's reasons for making any such modifications. The EPA requested that states and tribes respond to any proposed modifications, made by the EPA, by August 15, 2011. The state and tribal letters, including the initial recommendations, and the EPA's June 2011 responses to those letters, including any modifications, and the subsequent state and tribal comment letters are in the docket for this action.

Although not required by section 107(d) of the CAA, the EPA also provided an opportunity for members of the public to comment on the EPA's June 2011 response letters. In order to gather additional information for the EPA to consider before making final designations, the EPA published a notice on June 21, 2011, (76 FR 36042) which invited the public to comment on the response letters the EPA sent to states in June 2011. In that notice, the EPA provided the opportunity to all interested parties other than states and tribes to submit comments by July 21, 2011. The state and tribal initial recommendations and the EPA's responses, including modifications, were posted on a publicly accessible Web site (*http://www.epa.gov/leaddesignations/2008standards/index.html*). We did not receive any comments questioning our general approach to these designations. Comments from the public and the EPA's responses to state-specific comments are in the docket for this action.

In this rule, the EPA is designating as ''nonattainment'' five areas violating the 2008 Pb NAAQS based on 2008–2010 air quality data from the newly deployed monitoring network, extending a previously designated nonattainment area to encompass a violating monitor sited under the newly deployed monitoring network, and designating three areas as unclassifiable based on data reported to AQS in early 2011 that exceed the 2008 Pb NAAQS but have not been quality assured and certified. All other areas are designated as unclassifiable/attainment. The EPA uses this designation in practice for initial designations to mean that available information does not indicate that the air quality in these areas exceeds the 2008 Pb NAAQS.

## VI. What guidance did the EPA issue and how did the EPA apply the statutory requirements and applicable guidance to determine area designations and boundaries?

In the notice of proposed rulemaking for the revised Pb NAAQS (73 FR 29184), the EPA issued proposed guidance on its approach to implementing the standard, including its approach to initial area designations. The EPA solicited comment on that guidance and, in the notice of final rulemaking (73 FR 66964), adopted guidance concerning how to determine the boundaries for nonattainment areas for the Pb NAAQS.[5] In that guidance, the EPA indicated that it would use monitoring data from the 3 most recent calendar years to identify a violation of the Pb NAAQS. This is appropriate because the form of the Pb NAAQS is calculated over 36 consecutive valid 3-month site means (specifically for a 3 calendar year period and the 2 previous months).[6] The EPA is generally basing these final designations on monitored Pb concentrations from Federal Reference Method (FRM) and Federal Equivalent Method (FEM) monitors from calendar years 2008–2010, which were the most recent quality assured and certified data available upon which to base designations decisions.[7]

In the guidance, the EPA stated that the perimeter of a county containing a violating monitor would be the initial presumptive boundary for nonattainment areas, but also stated that the state, tribe, and/or the EPA could conduct additional area-specific analyses that could justify establishing either a larger or smaller area. The EPA indicated that the following factors should be considered in an analysis of whether to exclude portions of a county and whether to include additional nearby areas outside the county as part of the designated nonattainment area: (1) Emissions in areas potentially included versus excluded from the nonattainment area; (2) Air quality in potentially included versus excluded areas; (3) Population density and degree of urbanization including commercial development in included versus excluded areas; (4) Expected growth (including extent, pattern, and rate of growth); (5) Meteorology (weather/transport patterns); (6) Geography/topography (mountain ranges or other air basin boundaries); (7) Jurisdictional boundaries (*e.g.,* counties, air districts, reservations, etc.); and (8) Level of control of emission sources. The EPA further indicated that we would consider information provided by the state resulting from one or more of the following techniques: (1) Qualitative analysis; (2) spatial interpolation of air quality monitoring data; or (3) air quality simulation by dispersion modeling.

The EPA received comments on the proposed guidance suggesting that violations of the Pb NAAQS were likely to occur in close proximity to stationary sources of Pb. In response, the EPA indicated that it agreed that Pb emissions do not generally transport over long distances (*e.g.,* as compared to fine particulate matter), and that in situations where a single source, rather than multiple sources, is causing a NAAQS violation, the EPA believes that a state may well be able to use area-specific analyses to determine whether a nonattainment area that is smaller than the county boundary is appropriate.

The EPA found that states did use the factors and the variety of techniques identified by the EPA in making recommendations for nonattainment areas smaller than the county. In recommending boundaries, the EPA and states began with monitors that recorded a violation of the 2008 Pb NAAQS. As provided in Appendix R to 40 CFR part 50, all valid Pb-TSP data and all valid Pb-$PM_{10}$ data measured by a FRM or FEM monitor submitted to the EPA's Air Quality System (AQS), or otherwise available to the EPA, and meeting the requirements of 40 CFR part 58, including Appendices A, C, and E, are used in design value calculations.[8]

[5] *See also,* ''Area Designations for the Revised Lead National Ambient Air Quality Standards,'' memorandum to Regional Administrators, Regions I–X, from William Harnett, dated August 21, 2009.

[6] For convenience, this notice refers to the period of 3 calendar years and the 2 previous months simply as 3 calendar years. Thus, monitoring for ''calendar years 2008–2010'' includes data from November 2007 through December 2010.

[7] As noted above, the three unclassifiable designations are based on uncertified 2011 monitoring data, but there are no planning or control requirements that apply as a result of an unclassifiable designation.

[8] A design value is the air quality value that is compared to the NAAQS to determine compliance.

Continued

For areas with a violating monitor, the designated nonattainment area must encompass the entire area that does not meet, and any nearby area that contributes to ambient air quality in the area that does not meet, the 2008 Pb NAAQS. Given the sources and characteristics of Pb emissions, states and the EPA generally found factors such as emissions, air quality, and meteorology to be particularly relevant in determining appropriate boundaries, while factors such as population density and expected growth were not as relevant for the 2008 Pb NAAQS, and thus did not play a significant role in determining boundaries. In some cases, states made a judgment that it was important to follow jurisdictional boundaries, particularly where jurisdictional boundaries smaller than a county exist. In other cases, states chose to rely primarily on air dispersion modeling to determine the recommended boundaries for nonattainment areas. In each case, the EPA reviewed the state recommendations and, for the most part, the EPA has accepted the state's recommendations; however, where the EPA felt that changes were necessary to a state's initial recommendation, we conveyed those issues to the state and have worked with the state to revise the boundaries.

## VII. What air quality data has the EPA used?

The final Pb designations contained in this action are generally based upon air quality monitoring data from calendar years 2008–2010. As discussed previously, the form of the standard requires comparison of monitoring values from up to 36 3-month rolling averages (*i.e.,* 3 years, plus 2 preceding months). A violation will have occurred if any of the 36 3-month average concentrations of either Pb-TSP or Pb-$PM_{10}$ exceeds the level of the NAAQS, and a finding of compliance will require that all 36 3-month averages of Pb-TSP be at or below the level of the NAAQS.[9] Moreover, pursuant to the CAA, the EPA is making designations as expeditiously as practicable. Section 107(d) requires the EPA to designate areas as nonattainment if sufficient data exist to support such a designation.

Due to the timing of the siting of monitors under the monitoring plan established in the 2008 Pb NAAQS rule, data are available for several sites for early 2011 that did not have data available for 2008–2010. Two such monitors, one in Hayden, Arizona and one in Knox County, Tennessee, have data in AQS that exceed the standard for at least one 3-month period in 2011. Additionally, a site in Orange County, New York also has monitoring data in AQS for early 2011 that exceed the standard. The EPA anticipates that these data will be sufficient to support nonattainment designations or other appropriate action once quality assured and certified. However, the EPA cannot finalize nonattainment designations for these areas at this time because the data that were reported to AQS have not yet been quality assured and certified and appropriate nonattainment area boundaries have not been defined for two of the areas. Therefore, the EPA is designating these three areas as unclassifiable until this process can be completed.[10] As noted above, there are no additional planning or control requirements that apply as a result of an unclassifiable designation, as compared to a designation of ''unclassifiable/attainment.''

## VIII. How do designations affect Indian country?

All counties, partial counties, or Air Quality Control Regions listed in the table at the end of this document are designated as indicated. For the first round of Pb designations, the EPA only designated nonattainment areas and deferred all remaining areas to this second round of Pb designations. All areas in Indian country are being designated unclassifiable/attainment.

## IX. Where can I find information forming the basis for this rule and exchanges between the EPA, states, and tribes related to this rule?

Information providing the basis for this action and related decisions is provided in the technical support documents (TSDs), response to comments document, and other information in the docket. The TSDs, applicable EPA guidance memoranda, copies of correspondence regarding this process between the EPA and the states, tribes, and other parties, and the EPA's responses to comments, are available for review at the EPA Docket Center listed above in the addresses section of this document and on our designation Web site at *http://www.epa.gov/leaddesignations/2008standards/index.html.* State-specific information is available from the EPA Regional Offices.

## X. Statutory and Executive Order Reviews

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

This action will establish nonattainment designations for certain areas of the country for the Pb NAAQS. This action is not a ''significant regulatory action'' under the terms of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under those orders.

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule will respond to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1.

### *C. Regulatory Flexibility Act*

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because the rule is not subject to the APA and is subject to CAA section 107(d)(2)(B), which does not require that the agency issue a notice of proposed rulemaking before issuing this rule.

### *D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It

For the Pb NAAQS, the design value is the highest 3-month site mean of daily Pb concentrations over 36 consecutive 3-month means for 3 calendar years.

[9] For additional details on how to determine when the 2008 Pb NAAQS have been met, see 40 CFR part 50, Appendix R.

[10] The monitors that have shown apparent violations are the following: AQS ID 04–007–1002 in Hayden, AZ; AQS ID 47–093–0023 in Knox Co., TN; and AQS ID 36–071–3002 in Orange Co., NY.

does not create any additional requirements beyond those of the CAA and Pb NAAQS (40 CFR 50.16); therefore, no UMRA analysis is needed. This rule establishes nonattainment designations for certain areas of the country for the Pb NAAQS. The CAA requires states to develop plans, including control measures, based on the designations for areas within the state.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate general conformity of federal actions to SIPs. These rules apply to federal agencies making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any 1 year.

Nonetheless, the EPA communicated with government entities affected by this rule, including states, tribal governments, and local air pollution control agencies.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, or the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the process whereby states take primary responsibility in developing plans to meet the Pb NAAQS. This rule will not modify the relationship of the states and the EPA for purposes of developing programs to implement the Pb NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

This action is not designating any tribal areas as nonattainment. Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 2, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have Tribal implications.'' This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule concerns the designation of areas for the Pb NAAQS. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas based on their designations. The TAR provides tribes the opportunity to apply for eligibility to develop and implement CAA programs such as programs to attain and maintain the Pb NAAQS, but it leaves to the discretion of the tribe the decision of whether to develop and implement which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It does not create any additional requirements beyond those of the Pb NAAQS (40 CFR 50.16). This rule establishes the designation for most areas of the country for the Pb NAAQS but no areas in Indian country are being designated as nonattainment under this rule. Additionally, no tribe has implemented a CAA program to attain the Pb NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, the EPA communicated with tribal leaders and environmental staff regarding the designations process. The EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2008 Pb NAAQS, to provide the EPA designations guidance, and to offer consultation with the EPA. The EPA provided further information to tribes through presentations at the National Tribal Forum and through participation in National Tribal Air Association conference calls. The EPA also sent individualized letters to all federally recognized tribes that submitted recommendations to the EPA about the EPA's intended designations for the Pb standards and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to the EPA about the general designations process for the Pb NAAQS, as well as concerns specific to a tribe, and informed the EPA about key tribal concerns regarding designations as the rule was under development.

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

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. However, the protection offered by the Pb NAAQS may be especially important for children because neurological effects in children are among if not the most sensitive health endpoints for Pb exposure. Because children are considered a sensitive population, in setting the Pb NAAQS we carefully evaluated the environmental health effects of exposure to Pb pollution among children. These effects and the size of the population affected are summarized in the EPA's 2006 Air Quality Criteria Document for Pb and in the proposed and final Pb NAAQS rules. *See http://www.epa.gov/airquality/lead/fr/20081112.pdf.*

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

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

*I. National Technology Transfer and Advancement Act (NTTAA)*

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

bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable VCS.

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

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

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

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on any population, including minority or low-income populations.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the U.S. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 31, 2011.

*L. Judicial Review*

Section 307 (b) (1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by the EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule designating areas for the 2008 Pb NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). This rule establishes designations for areas across the U.S. for the 2008 Pb NAAQS. At the core of this rulemaking is the EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA, and its application of that interpretation to areas across the country.

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the designations apply to areas across the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the D.C. Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register.**

**List of Subjects in 40 CFR Part 81**

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

Dated: November 8, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 81, is amended as follows:

## PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

## Subpart C—[Amended]

■ 2. Section 81.301 is amended as follows:

■ a. By removing the table entitled ''Alabama—Lead.''

■ b. By adding two tables entitled ''Alabama—1978 Lead NAAQS'' and ''Alabama—2008 Lead NAAQS'' to the end of the section.

**§ 81.301 Alabama.**

* * * * *

ALABAMA—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Statewide | 3/7/95 | Attainment. | | |

ALABAMA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Troy, AL: | | |
| Pike County (part) Area is bounded by a 0.8 mile radius from a center point at latitude 31.78627106 North and longitude 85.97862228 West, which fully includes the Sanders Lead facility. | 12/31/10 | Nonattainment. |

ALABAMA—2008 LEAD NAAQS—Continued

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 3. Section 81.302 is amended by adding a table entitled ''Alaska—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.302 Alaska.**

* * * * *

ALASKA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 4. Section 81.303 is amended by adding a table entitled ''Arizona—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.303 Arizona.**

* * * * *

ARIZONA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Hayden, AZ: | | |
| Gila County (part) | | Unclassifiable. |
| The portions of Gila County that are bounded by: T4S,R15E; T4S,R16E (except those portions in the San Carlos Indian Reservation); T5S,R15E; T5S,R16E (except those portions in the San Carlos Indian Reservation). | | |
| Pinal County (part) | | Unclassifiable. |
| The portions of Pinal County that are bounded by: T4S,R14E; T4S, R15E; T4S,R16E (except those portions in the San Carlos Indian Reservation); T5S,R14E; T5S,R15E; T5S,R16E (except those portions in the San Carlos Indian Reservation); T6S,R14E; T6S,R15E; T6S,R16E (except those portions in the San Carlos Indian Reservation). | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 5. Section 81.304 is amended by adding a table entitled ''Arkansas—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.304 Arkansas.**

* * * * *

ARKANSAS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 6. Section 81.305 is amended as follows:

■ a. By removing the table entitled ''California—Lead.''

■ b. By adding a table entitled ''California—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.305 California.**

* * * * *

CALIFORNIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Los Angeles County—South Coast Air Basin, CA: | | |
| Los Angeles County (part) | 12/31/10 | Nonattainment. |
| That portion of Los Angeles County which lies south and west of line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then North along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17 and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with The Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 7. Section 81.306 is amended by adding a table entitled ''Colorado—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.306 Colorado.**

* * * * *

COLORADO—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 8. Section 81.307 is amended by adding a table entitled ''Connecticut—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.307 Connecticut.**

* * * * *

CONNECTICUT—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 9. Section 81.308 is amended by adding a table entitled ''Delaware—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.308 Delaware.**

* * * * *

DELAWARE—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 10. Section 81.309 is amended by adding a table entitled ''District of Columbia—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.309 District of Columbia.**

* * * * *

DISTRICT OF COLUMBIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 11. Section 81.310 is amended as follows:

■ a. By removing the table entitled ''Florida—Lead.''

■ b. By adding two tables entitled ''Florida—1978 Lead NAAQS'' and ''Florida—2008 Lead NAAQS'' to the end of the section.

**§ 81.310 Florida.**

* * * * *

FLORIDA—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Hillsborough County (part)<br>The area encompassed within a radius of (5) kilometers centered at UTM coordinates: 364.0 East, 3093.5 North, zone 17 (in city of Tampa). | 1/6/92 | Unclassifiable. | | |
| Rest of State Not Designated. | | | | |

FLORIDA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Tampa, FL: | | |
| Hillsborough County (part) | 12/31/10 | Nonattainment. |
| Area is located within a 1.5 km radius centered at UTM coordinates 364104 meters E, 3093830 meters N, Zone 17, which surrounds the EnviroFocus Technologies facility. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 12. Section 81.311 is amended as follows:

■ a. By removing the table heading ''Georgia—Lead'' and adding in its place the table heading ''Georgia—1978 Lead NAAQS.''

■ b. By adding a table entitled ''Georgia—2008 Lead NAAQS'' to the end of the section.

**§ 81.311 Georgia.**

* * * * *

GEORGIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] December 31, 2011 unless otherwise noted.

■ 13. Section 81.312 is amended by adding a table entitled ''Hawaii—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.312 Hawaii.**

* * * * *

HAWAII—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 14. Section 81.313 is amended by adding a table entitled ''Idaho—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.314 Idaho.**

* * * * *

IDAHO—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 15. Section 81.314 is amended as follows:

■ a. By removing the table entitled ''Illinois—Lead.''

■ b. By adding a table entitled ''Illinois—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.314 Illinois.**

* * * * *

ILLINOIS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Chicago, IL: | | |
| Cook County (part) | | Nonattainment. |
| Area bounded by Damen Ave. on the west, Roosevelt Rd. on the north, the Dan Ryan Expressway on the east, and the Stevenson Expressway on the south. | | |
| Granite City, IL: | | |
| Madison County (part) | 12/31/10 | Nonattainment. |
| Area is bounded by Granite City Township and Venice Township. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 16. Section 81.315 is amended as follows:

■ a. By removing the table entitled ''Indiana—Lead.''

■ b. By adding two tables entitled ''Indiana—1978 Lead NAAQS'' and ''Indiana—2008 Lead NAAQS'' to the end of the section.

**§ 81.315 Indiana.**

* * * * *

INDIANA—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Marion County (Part)— | 7/10/00 | Attainment. | | |
| Part of Franklin Township: Thompson Road on the south; Emerson Avenue on the west; Five Points Road on the east; and Troy Avenue on the north. | | | | |
| Marion County (Part)— | 7/10/00 | Attainment. | | |

INDIANA—1978 LEAD NAAQS—Continued

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Part of Wayne Township: Rockville Road on the north; Girls School Road on the east; Washington Street on the south; and Bridgeport Road on the west. | | | |
| Rest of State Not Designated. | | | | |

INDIANA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Muncie, IN: | | |
| Delaware County (part) | 12/31/10 | Nonattainment. |
| A portion of the City of Muncie, Indiana bounded to the North by West 26th Street/Hines Road, to the east by Cowan Road, to the south by West Fuson Road, and to the west by a line running south from the eastern edge of Victory Temple's driveway to South Hoyt Avenue and then along South Hoyt Avenue. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 17. Section 81.316 is amended by adding a table entitled ''Iowa—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.316 Iowa.**

* * * * *

IOWA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Pottawattamie, IA: | | |
| Pottawattamie County (part) | | Nonattainment. |
| Area bounded by Avenue G on the north, N 16th/S 16th street on the east, 23rd Avenue on the south, and N 35th/S 35th street on the west. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 18. Section 81.317 is amended by adding a table entitled ''Kansas—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.317 Kansas.**

* * * * *

KANSAS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Saline County, KS: | | |
| Saline County (part) | | Nonattainment. |
| Area bounded by Schilling Rd. on the north, ¼ mile west of S. Ohio St. on the east, Water Well Rd. on the south, and 9th Street on the west. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 19. Section 81.318 is amended by adding a table entitled ''Kentucky—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.318 Kentucky.**

* * * * *

KENTUCKY—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 20. Section 81.319 is amended as follows:

■ a. By removing the table heading ''Louisiana—Lead'' and adding in its place table heading ''Louisiana—1978 Lead NAAQS.''

■ b. By adding a table to the end of the section entitled ''Louisiana—2008 Lead NAAQS.''

**§ 81.319 Louisiana.**

* * * * *

LOUISIANA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 21. Section 81.320 is amended by adding a table entitled ''Maine—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.320 Maine.**

* * * * *

MAINE—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 22. Section 81.321 is amended by adding a table entitled ''Maryland—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.321 Maryland.**

* * * * *

MARYLAND—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 23. Section 81.322 is amended by adding a table entitled ''Massachusetts—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.322 Massachusetts.**

* * * * *

MASSACHUSETTS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 24. Section 81.323 is amended by adding a table entitled ''Michigan—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.323 Michigan.**

* * * * *

MICHIGAN—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Belding, MI: | | |
| Ionia County (part) | | Nonattainment. |
| The area bounded by the following coordinates: Southeast corner by latitude 43.0956705 N and longitude 85.2130771 W; southwest corner (intersection of S. Broas St. and W. Washington St.) by latitude 43.0960358 N and longitude 85.2324027 W; northeast corner by latitude 43.1074942 N and longitude 85.2132313 W; western boundary 1 (intersection of W. Ellis St. and the vertical extension of S. Broas St.) by latitude 43.1033277 N and longitude 85.2322553 W; western boundary 2 (intersection of W. Ellis St. and N. Bridge St.) by latitude 43.1033911 N and longitude 85.2278464 W; western boundary 3 (intersection of N. Bridge St. and Earle St.) by latitude 43.1074479 N and longitude 85.2279722 W. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 25. Section 81.324 is amended as follows:

■ a. By removing the table entitled ''Minnesota—Lead.''

■ b. By adding two tables entitled ''Minnesota—1978 Lead NAAQS'' and ''Minnesota—2008 Lead NAAQS'' to the end of the section.

**§ 81.324 Minnesota.**

* * * * *

MINNESOTA—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Dakota County | 12/19/94 | Attainment. | | |
| Rest of State not designated. | | | | |

MINNESOTA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Eagan, MN: | | |
| Dakota County (part) | 12/31/10 | Nonattainment. |
| Portions of Dakota County that are bounded by: Lone Oak Rd. (County Rd. 26) to the north, County Rd. 63 to the east, Wescott Rd. to the south, and Lexington Ave. (County Rd. 43) to the west. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 26. Section 81.325 is amended by adding a table entitled ''Mississippi—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.325 Mississippi.**

* * * * *

MISSISSIPPI—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 27. Section 81.326 is amended as follows:

■ a. By removing the table entitled ''Missouri—Lead.''

■ b. By adding two tables entitled ''Missouri—1978 Lead NAAQS'' and ''Missouri—2008 Lead NAAQS'' to the end of the section.

**§ 81.326 Missouri.**

* * * * *

MISSOURI—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Iron County (part) | | | | |
| Within boundaries of Dent Township | 10/18/00 | Attainment. | | |
| Iron County (part) | | | | |
| Within boundaries of Liberty and Arcadia Townships. | 10/29/04 | Attainment. | | |
| Jefferson County (part) | | | | |
| Within city limits of Herculaneum | 1/6/92 | Nonattainment. | | |
| Dent County | 1/6/92 | Unclassifiable. | | |
| Holt County | 1/6/92 | Unclassifiable. | | |
| Rest of State Not Designated. | | | | |

MISSOURI—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Iron, Dent, and Reynolds Counties, MO: | | |
| Dent County (part) | 2/31/10 | Nonattainment. |
| Sections 4, 9, 16, 21, 28, 33 of T34N, R2W. | | |
| Iron County (part) | 12/31/10 | Nonattainment. |
| Sections 6–7, 18–19, 30–32 of T34N, R1W and Sections 1–3, 10–15, 22–27, 34–36 of T34N, R2W. | | |
| Reynolds County (part) | 12/31/10 | Nonattainment. |
| Sections 5–7 of T33N, R1W and Sections 1–3, 10–12 of T33N, R2W. | | |
| Jefferson County, MO: | | |
| Jefferson County (part) | 12/31/10 | Nonattainment. |
| Within city limits of Herculaneum. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 28. Section 81.327 is amended as follows:

■ a. By removing the table heading ''Montana—Lead'' and adding in its place table heading ''Montana—1978 Lead NAAQS.''

■ b. By adding a table to the end of the section entitled ''Montana—2008 Lead NAAQS.''

**§ 81.327 Montana.**

* * * * *

MONTANA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 29. Section 81.328 is amended as follows:

■ a. By removing the table heading ''Nebraska—Lead'' and adding in its place table heading ''Nebraska—1978 Lead NAAQS.''

■ b. By adding a table to the end of the section entitled ''Nebraska—2008 Lead NAAQS.''

**§ 81.328 Nebraska.**

* * * * *

NEBRASKA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 30. Section 81.329 is amended by adding a table entitled ''Nevada—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.329 Nevada.**

* * * * *

NEVADA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 31. Section 81.330 is amended by adding a table entitled ''New Hampshire—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.330 New Hampshire.**

* * * * *

NEW HAMPSHIRE—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 32. Section 81.331 is amended by adding a table entitled ''New Jersey—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.331 New Jersey.**

* * * * *

NEW JERSEY—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 33. Section 81.332 is amended by adding a table entitled ''New Mexico—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.332 New Mexico.**

* * * * *

NEW MEXICO—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 34. Section 81.333 is amended as follows:

■ a. By removing the table heading ''New York—Lead'' and adding in its place table heading ''New York—1978 Lead NAAQS.''

■ b. By adding a table entitled ''New York—2008 Lead NAAQS'' to the end of the section.

**§ 81.333 New York.**

* * * * *

NEW YORK—2008 LEAD NAAQS

| Designation area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Orange County, NY: | | |
| Orange County | | Unclassifiable. |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] December 31, 2011 unless otherwise noted.

■ 35. Section 81.334 is amended by adding a table entitled ''North Carolina—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.334 North Carolina.**

* * * * *

NORTH CAROLINA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 36. Section 81.335 is amended by adding a table entitled ''North Dakota—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.335 North Dakota.**

* * * * *

NORTH DAKOTA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 37. Section 81.336 is amended as follows:

■ a. By removing the table entitled ''Ohio—Lead.''

■ b. By adding two tables entitled ''Ohio—1978 Lead NAAQS'' and ''Ohio—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.336 Ohio.**

* * * * *

OHIO—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Cuyahoga County (part)<br>Subcounty area in the vicinity of Master Metals ..<br>On the west by Interstate 71, on the north by the Conrail tracks, on the east by Interstate 77, and on the south by a line running from the intersection of Interstate 71 and Clark Avenue to the intersection of Interstate 77 and Pershing Avenue.<br>Rest of State Not Designated. | 1/6/92 | Unclassifiable. | | |

OHIO—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Bellefontaine, OH: | | |
| Logan County (part) | 12/31/10 | Nonattainment. |
| The portions of Logan County that are bounded by: sections 27, 28, 33, and 34 of Lake Township. | | |
| Cleveland, OH: | | |
| Cuyahoga County (part) | 12/31/10 | Nonattainment. |
| The portions of Cuyahoga County that are bounded on the west by Washington Park Blvd./Crete Ave./East 49th St., on the east by East 71st St., on the north by Fleet Ave., and on the south by Grant Ave. | | |
| Delta, OH: | | |
| Fulton County (part) | 12/31/10 | Nonattainment. |
| The portions of Fulton County that are bounded by: sections 12 and 13 of York Township and sections 7 and 18 of Swan Creek Township. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] December 31, 2011 unless otherwise noted.

■ 38. Section 81.337 is amended by adding a table entitled ''Oklahoma—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.337 Oklahoma.**

* * * * *

OKLAHOMA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date[1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 39. Section 81.338 is amended by adding a table entitled ''Oregon—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.338 Oregon.**

* * * * *

OREGON—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 40. Section 81.339 is amended as follows:

■ a. By removing the table entitled ''Pennsylvania—Lead.''

■ b. By adding a table entitled ''Pennsylvania—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.339 Pennsylvania.**

* * * * *

PENNSYLVANIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date [1] | Type |
| Lower Beaver Valley, PA: | | |
| Beaver County (part) | [2] 12/31/10 | Nonattainment. |
| Area is bounded by Potter Township, Vanport Township, and Center Township. | | |
| Lyons, PA: | | |
| Berks County (part) | 12/31/10 | Nonattainment. |
| Area is bounded by Kutztown Borough, Lyons Borough, Maxatawny Township and Richmond Township. | | |
| North Reading, PA: | | |
| Berks County (part) | 12/31/10 | Nonattainment. |
| Area is bounded by Alsace Township, Laureldale Borough, and Muhlenberg Township. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.
[2] Center Township was included in the nonattainment area as of 12/31/11.

■ 41. Section 81.340 is amended by adding a table entitled ''Rhode Island—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.340 Rhode Island.**

* * * * *

RHODE ISLAND—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 42. Section 81.341 is amended by adding a table entitled ''South Carolina—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.341 South Carolina.**

* * * * *

SOUTH CAROLINA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 43. Section 81.342 is amended by adding a table entitled ''South Dakota—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.342 South Dakota.**

* * * * *

SOUTH DAKOTA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 44. Section 81.343 is amended as follows:

■ a. By removing the table entitled ''Tennessee—Lead.''

■ b. By adding two tables entitled ''Tennessee—1978 Lead NAAQS'' and ''Tennessee—2008 Lead NAAQS'' to the end of the section.

**§ 81.343 Tennessee.**

* * * * *

TENNESSEE—1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Shelby County (part) | 7/2/01 | Attainment. | | |
| Area encompassed by a circle with a ¾ mile radius with center being the intersection of Castex and Mallory Avenue, Memphis, TN. | | | | |
| Williamson County (part) | 9/10/99 | Attainment. | | |
| Area encompassed by a circle centered on Universal Transverse Mercator coordinate 530.38 E, 3961.60 N (Zone 16) with a radius of 1.5 kilometers. | | | | |
| Fayette County (part) | 10/17/95 | Attainment. | | |
| Area encompassed by a circle centered on Universal Transverse Mercator coordinate 267.59 E, 3881.30 N (Zone 16) with a radius of 1.0 kilometers. | | | | |
| Rest of State Not Designated. | | | | |

TENNESSEE—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Bristol, TN: | | |
| Sullivan County (part) | 12/31/10 | Nonattainment. |
| Area is bounded by a 1.25 km radius surrounding the UTM coordinates 4042923 meters E, 386267 meters N, Zone 17, which surrounds the Exide Technologies Facility. | | |
| Knox County, TN: | | |
| Knox County | | Unclassifiable. |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 45. Section 81.344 is amended as follows:

■ a. By removing the table entitled ''Texas—Lead.''

■ b. By adding two tables entitled ''Texas—1978 Lead NAAQS'' and ''Texas—2008 Lead NAAQS'' to the end of the section.

**§ 81.344 Texas.**

TEXAS–1978 LEAD NAAQS

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Collin County (all) | 12/13/99 | Attainment. | | |
| Eastside: | | | | |
| Starting at the intersection of south Fifth St. and the fence line approximately 1000′ south of the GNB property line going north to the intersection of south Fifth St. and Eubanks St.; | | | | |
| Northside: | | | | |
| Proceeding west on Eubanks to the Burlington Railroad tracks; | | | | |
| Westside: | | | | |
| Along Burlington Railroad tracks to the fence line approximately 1000′ south of the GNB property line; | | | | |
| Southside: | | | | |
| Fence line approximately 1000′ south of the GNB property line. | | | | |
| Bexar County (part) | | | | |
| Northside: | | | | |
| Starting at intersection of Loop 1604 and Nelson Gardens Road and along the Nelson Gardens Road to Covel Road; | | | | |
| Eastside: | | | | |
| Along Covel Road to Pearsall Road and along Pearsall Road to Nelson Road; | | | | |
| Southside: | | | | |
| Along Nelson Road to where it intersects with Loop 1604; | | | | |
| Westside: | | | | |
| Along Loop 1604 where it intersects with Nelson Gardens Road. | | | | |
| Rest of State Not Designated. | | | | |

[1] This date is November 15, 1990, unless otherwise noted.

TEXAS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Frisco, TX: | | |
| Collin County (part) | 12/31/10 | Nonattainment. |
| The area immediately surrounding the Exide Technologies battery recycling plant in Frisco, bounded to the north by latitude 33.153 North, to the east by longitude 96.822 West, to the south by latitude 33.131 North, and to the west by longitude 96.837 West. | | |
| Rest of State | ..... | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 46. Section 81.345 is amended by adding a table entitled ''Utah—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.345 Utah.**

* * * * *

UTAH—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | ..... | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] December 31, 2011 unless otherwise noted.

■ 47. Section 81.346 is amended by adding a table entitled ''Vermont—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.346 Vermont.**

* * * * *

VERMONT—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 48. Section 81.347 is amended by adding a table entitled ''Virginia—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.347 Virginia.**

* * * * *

VIRGINIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 49. Section 81.348 is amended by adding a table entitled ''Washington—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.348 Washington.**

* * * * *

WASHINGTON—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 50. Section 81.349 is amended by adding a table entitled ''West Virginia—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.349 West Virginia.**

* * * * *

WEST VIRGINIA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 51. Section 81.350 is amended by adding a table entitled ''Wisconsin—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.350 Wisconsin.**

* * * * *

WISCONSIN—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 52. Section 81.351 is amended by adding a table entitled ''Wyoming—2008 Lead NAAQS'' to to the end of the section read as follows:

**§ 81.351 Wyoming.**

* * * * *

WYOMING—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 53. Section 81.352 is amended by adding a table entitled ''American Samoa—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.352 American Samoa.**

* * * * *

AMERICAN SAMOA—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 54. Section 81.353 is amended by adding a table entitled ''Guam—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.353 Guam.**

* * * * *

GUAM—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 55. Section 81.354 is amended by adding a table entitled ''Northern Mariana Islands—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.354 Northern Mariana Islands.**

* * * * *

NORTHERN MARIANA ISLANDS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 56. Section 81.355 is amended by adding a table entitled ''Puerto Rico—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.355 Puerto Rico.**

* * * * *

PUERTO RICO—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Arecibo, PR: | | |
| Arecibo Municipio (part) | | Nonattainment. |
| Area bounded by 4 km from the boundaries of the Battery Recycling Company facility. | | |
| Rest of State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

■ 57. Section 81.356 is amended by adding a table entitled ''Virgin Islands—2008 Lead NAAQS'' to the end of the section to read as follows:

**§ 81.356 Virgin Islands.**

* * * * *

VIRGIN ISLANDS—2008 LEAD NAAQS

| Designated area | Designation for the 2008 NAAQS [a] | |
|---|---|---|
| | Date [1] | Type |
| Whole State | | Unclassifiable/Attainment. |

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] December 31, 2011 unless otherwise noted.

[FR Doc. 2011–29460 Filed 11–21–11; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 112

**[EPA–HQ–OPA–2011–0838; FRL–9494–8]**

**RIN 2050–AG69**

## Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment for Farms

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA (or the Agency) is taking final action to amend the date by which farms must prepare or amend, and implement their Spill Prevention, Control, and Countermeasure Plans to May 10, 2013. The date is being amended because a large segment of the continental U.S. was affected by flooding during the spring and summer of 2011, and other areas were impacted by devastating fires and drought conditions. In addition, despite the targeted farm outreach efforts by EPA over the past ten months, the sheer number of farms throughout the U.S. makes it a challenge to reach those owners and operators of farms that may be subject to the SPCC Plan regulations. As a result, the Agency believes that farms need additional time to come into compliance with the requirements to prepare or amend and implement a SPCC Plan.

**DATES:** This rule is effective on November 22, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–HQ–OPA–2011–0838. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–1744.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this final rule, contact either Lynn Beasley at (202) 564–1965 (*beasley.lynn@epa.gov*) or Mark W. Howard at (202) 564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460–0002, Mail Code 5104A.

**SUPPLEMENTARY INFORMATION:**

### I. Does this action apply to me?

| Industry sector | NAICS code |
|---|---|
| Farms | 111, 112 |
| Government | 92 |

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

### II. What does this amendment do?

This action amends the date by which farms as defined in section 112.2 must prepare or amend, and implement their SPCC Plan to May 10, 2013. A farm is defined in this section as a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, $1,000 or more of agricultural products during a year.

On June 19, 2009 (74 FR 29136), EPA issued a final rule in the **Federal Register** that amended the dates by which facilities must prepare or amend their SPCC Plans, and implement those Plans to November 10, 2010. On October 14, 2010 (75 FR 63093), EPA issued a final rule in the **Federal Register** with a new compliance date of November 10, 2011, by which certain facilities must prepare or amend, and implement their SPCC Plans, providing an additional year for the remaining facilities. On October 18, 2011, EPA issued a direct final rule (76 FR 64245) and a concurrent proposed rule (76 FR 64296), in the **Federal Register** that amended the dates by which farms must prepare or amend their SPCC Plans, and implement those Plans to May 10, 2013.

Prior to the close of the public comment period for the concurrent proposed rule, the Agency received written adverse comments concerning the amended compliance dates. This final rule supersedes any and all prior published rules, including the direct final rule, in extending the compliance date to May 10, 2013 for the owners or operators of farms as defined in 40 CFR 112.2. We have addressed the public comments in the Response to Comment section of this preamble. This action further extends the compliance date to May 10, 2013 for the owners or operators of farms as defined in 40 CFR 112.2. The Agency recognizes that the owners or operators of some facilities excluded from the extension of the compliance date may still require additional time to amend or prepare their SPCC Plans as a result of either non-availability of qualified personnel,

or delays in construction or equipment delivery beyond the control and without the fault of the owner or operator. If so, the owner or operator of the facility may submit a written request for additional time to amend or prepare a SPCC Plan to the Regional Administrator in accordance with § 112.3(f).

Under 40 CFR 112.3(f) the Regional Administrator may authorize an extension of time for the preparation and full implementation of a SPCC Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a SPCC Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees. If you are an owner or operator seeking an extension of time, you may submit a written extension request to the Regional Administrator. Your request must include a:

(i) Full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;

(ii) Full discussion of actions being taken or contemplated to minimize or mitigate such delay; and

(iii) Proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

The submission of a written extension request does not relieve you of your obligation to comply with the requirements of 40 CFR part 112. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time for particular equipment or other specific aspects of the SPCC Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the SPCC Plan for which the Regional Administrator has not expressly authorized an extension.

This action is not the vehicle for other extensions. EPA is not extending the compliance date for any other facilities as other facilities are not season-dependent and are less likely to be impacted by severe weather conditions. Additionally, other facilities retain the alternative mechanism for requesting an extension to the compliance date through 40 CFR 112.3(f).

## III. What was the basis for extending the SPCC compliance date for farms?

A large segment of the continental U.S. was affected by flooding during the spring and summer of 2011. Other areas were impacted by devastating fires and drought conditions. In fact, many counties in several states were declared disaster areas by either the federal or their state government or both. EPA has received a number of letters and other correspondence, from State Agricultural Departments and other parties, explaining the impact of these recent floods on the owners and operators of farms and their ability to comply with the SPCC rule. These owners and operators have experienced interruptions in planting, cultivation and harvesting due to these floods. According to the Federal Emergency Management Agency (FEMA) in 2011, the Agency issued 56 Major Disaster/Emergency Declarations specifically associated with flooding events.

According to FEMA's 2011 data, approximately two thirds of the fifty states had a FEMA flooding Major Disaster/Emergency Declarations. Almost a quarter of the fifty states had multiple FEMA declarations due to flooding. These declarations are widespread throughout the crop production areas of the country. The Agency was also advised in the correspondence that there may be a lack of available qualified Professional Engineers (PEs) in some areas of the country to assist in the preparation, implementation, and review of SPCC Plans for farms.

In addition, despite the targeted farm outreach efforts by EPA over the past ten months, the sheer number of farms throughout the U.S. makes it a challenge to reach those owners and operators of farms that may be subject to the SPCC Plan regulations. As a result, the Agency believes that farms, as defined in section 112.2, need additional time to come into compliance with the requirements to prepare or amend and implement a SPCC Plan. While the Agency could require farms to request an extension pursuant to 40 CFR 112.3(f), as described above, the Agency believes that unless the Agency extends the compliance date for farms, we will receive an overwhelming number of requests for individual extensions. The Agency believes that this would be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests.

Thus, the Agency has decided to extend the compliance date by which owners or operators of a farm must prepare or amend and implement a SPCC Plans to May 10, 2013. The additional 18 months allows enough time for farms to come in compliance with this regulation. The owners and operators of farms are strongly encouraged not to delay, and to take advantage of the off-season for planting and growing, in preparing their SPCC Plans. However, any farm owner or operator who is not able to come into compliance by May 10, 2013, and wishes to seek a further extension of the compliance date, should submit a written request to the Regional Administrator of the EPA Regional Office for the state where the farm is located in accordance with paragraph (f) of 40 CFR 112.3.

Finally, we would note that the amendment to the compliance date does not remove the regulatory requirement for owners or operators of farms in operation before August 16, 2002, to have and to maintain and continue implementing a SPCC Plan in accordance with the SPCC regulations then in effect. Such owners and operators continue to be required to maintain their SPCC Plans during the interim until the applicable compliance date for amending and implementing the amended SPCC Plans. In addition, the amendment of the compliance date does not relieve owners or operators of farms from the potential liability under the Clean Water Act or other environmental statutes or regulations for any spills (see 40 CFR part 110) that may occur.

## IV. Response to Comments

The Agency received four comments. All of the comments were adverse in nature. A response to comment document can be found in the Agency's docket for this rule (EPA–HQ–OPA–2011–0838).

*Comments:* Comments received on the direct final rule with a concurrent proposed rule either disagreed with providing any extension or in one case the length of time (18 months) for the extension, suggesting instead a shorter extension. The commenters that expressly requested that the 18 month extension for farms not be granted cited one or more of the following concerns: (1) That repeated extensions (eight times) of compliance dates removes the urgency for farms to ''do the right thing'' from an environmental perspective or otherwise put off their SPCC obligations; (2) interferes with the (commenters') ability to communicate to potential clients (farmers) the need to

come into compliance soon; (3) there are many companies ready to assist farmers with their SPCC Plans; and (4) there are millions of dollars in grants available to farmers to help them come into compliance with the SPCC regulations. Two of the commenters suggested that greater outreach to farms regarding the SPCC Plan requirements is needed instead of the extension.

One commenter agreed that an extension is necessary but does not agree with the time frame of 18 months. The commenter stated that a vast majority of farming clients have indicated that they are out of harvest and feel confident that they can finalize their SPCC Plans during the winter months. Therefore, a three to four month extension coupled with a concerted effort to inform farmers of their regulatory responsibilities would be of far greater benefit to the farming community. The commenter cited three primary concerns of the proposed extension: (1) It jeopardizes the resources that are currently available to help producers gain compliance; (2) there are solutions and professionals available including a ''free of charge'' online SPCC Plan creation tool, even though most farms do not need a professional engineer (PE) to certify their SPCC Plan and are able to prepare a self-certified SPCC Plan; and (3) a concerted effort must be made to inform and educate farmers about the SPCC rule and their responsibilities. One commenter cited a potential loss of jobs associated with the action and the inequity of EPA's enforcement of the SPCC regulation on farmers as compared to other sectors, such as the oil and gas sector.

*Response:* While we recognize that there have been multiple extensions to the compliance date under 40 CFR 112.3—Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan, at this time, we are further extending the date for compliance for a narrow segment of industries that are covered by this regulation; *i.e.,* farms.

The Agency considered comments that opposed any extension to the compliance date and the comment that recognized a compliance date extension was appropriate, but suggested a shorter compliance date, as well as letters from the Secretary of Agriculture, Arkansas Agriculture Department, the Commissioner of the Mississippi Department of Agriculture and Commerce and the Commissioner of the Louisiana Department of Agriculture previously received by the Agency, that specifically requested an additional 24 months for farms to implement SPCC Plans and recover financially from the impacts of extreme weather, find qualified engineers, and install the proper equipment. The Agency proposed an 18 month extension determining that 24 months may be too long a period and decided 18 months should be adequate time for the farms. We still believe 18 months is the correct timeframe upon hearing from commenters that there are firms available to assist the farmers to come into compliance.

The Agency recognizes that farms, more than other industries, are directly impacted by extreme weather conditions, such as the devastating flooding and drought that was experienced this past year by a substantial portion of the continental U.S. Rather than requiring all impacted farms to submit a written request to the Regional Administrator of the EPA Regional Office for the state where the farm is located in accordance with paragraph (f) of 40 CFR 112.3, we determined that it is more efficient to extend the compliance date for the farm industry. We also want to emphasize that farms should not wait until May 10, 2013, to ready their SPCC Plans. Farms should take advantage of non-growing and non-harvesting seasons to focus on preparing and implementing their SPCC Plans.

*Comments:* Additionally, three of the four comments correctly explain that EPA's action does not provide an extension for those farms that were in operation on or before August 16, 2002, and which did not have a previously developed SPCC Plan. Such farms may be in noncompliance with the rule. A commenter also questioned the necessity of the current action, pointing out that most farms are in noncompliance and would not benefit from the extension. A second commenter also pointed out the misconception that all farmers (producers) will be eligible for the extension. The commenter stated that many farmers do not have SPCC Plans, thus, making them ineligible for the extension.

*Response:* The Agency agrees with commenters that said that only existing farms maintaining an SPCC plan or new farms coming into operation after August 16, 2002, are eligible for the extension provided by this action.

## V. Statutory and Executive Order Reviews

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

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

### *B. Paperwork Reduction Act*

This final action does not impose any new information collection burden. The amendments in this final rule simply extend the compliance date for farms. This final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR 112 under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0021. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

### *C. Regulatory Flexibility Act (RFA)*

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

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

After considering the economic impacts of this final rule on small entities, I certify that this action will not

have a significant economic impact on a substantial number of small entities. The final rule simply amends the date for compliance. The final rule does not itself add any additional subparts or requirements. The final rule will not impose any new requirements on small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this final rule change the compliance date for farms.

*E. Executive Order 13132: Federalism*

Executive Order (EO) 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the EO to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.''

This final rule does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This amendment applies directly to farms. It does not apply to governmental entities unless the government entity owns a farm, as defined in 40 CFR 112.2 Definitions. This regulation also does not limit the power of states or localities to regulate farms. Thus, EO 13132 does not apply to this final rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this final rule do not result in any changes to the requirements of the 2009 rule. Thus Executive Order 13175 does not apply to this action.

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

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

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

*I. National Technology Transfer and Advancement Act*

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

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

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

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

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

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective November 22, 2011.

**List of Subjects in 40 CFR Part 112**

Oil pollution prevention, Farms, Compliance date, Reporting and recordkeeping requirements.

Dated: November 10, 2011.

**Lisa P. Jackson,**

*Administrator.*

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

## PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.;* 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p.351.

■ 2. Section 112.3 is amended by revising paragraph (a)(3) to read as follows:

**§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.**

* * * * *

(a) * * *

(3) If your farm, as defined in § 112.2, was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the amended Plan on or before May 10, 2013. If your farm becomes operational after August 16, 2002, through May 10, 2013, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before May 10, 2013. If your farm becomes operational after May 10, 2013, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 2011–29901 Filed 11–21–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 11–123]**

### Internet-Based Telecommunications Relay Service Numbering

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Internet-Based Telecommunications Relay Service Numbering,* Report and Order (*Report and Order).* The information collection requirements were approved on September 27, 2011 by OMB.

**DATES:** 47 CFR 64.611(e)(2), 64.611(e)(3), 64.611(g)(1)(v), 64.611 (g)(1)(vi), and 64.613(a)(3), are effective November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Heather Hendrickson, Competition Policy Division, Wireline Competition Bureau, at (202) 418–7295, or email: *Heather.Hendrickson@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This document announces that, on September 27, 2011, OMB approved, for a period of three years, the information collection requirements contained in 47 CFR 64.611(e)(2), 64.611(e)(3), 64.611(g)(1)(v), 64.611 (g)(1)(vi), and 64.613(a)(3). The Commission publishes this notice as an announcement of the effective date of the rules. *See* Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123; WC Docket No. 05–196; WC Docket No. 10–191; FCC 11–123, published at 76 FR 59511, September 27, 2011. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1089, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov.*

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

### Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on September 27, 2011, for the information collection requirements contained in the Commission's rules at 47 CFR 64.611(e)(2), 64.611(e)(3), 64.611(g)(1)(v), 64.611(g)(1)(vi), and 64.613(a)(3).

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

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current valid OMB Control Number. The OMB Control Number is 3060–1089.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

*OMB Control Number:* 3060–1089.

*OMB Approval Date:* September 27, 2011.

*OMB Expiration Date:* December 31, 2013.

*Title:* Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; E911 Requirements for IP–Enabled Service Providers; Internet-Based Telecommunications Relay Service Numbering, CG Docket No. 03–123, WC Docket No. 05–196, and WC Docket No. 10–191; FCC 11–123.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions; Individuals or households; State, local or tribal government.

*Number of Respondents and Responses:* 15 respondents; 5,763,199 responses.

*Estimated Time per Response:* 0.25–1.5 hours.

*Frequency of Response:* On occasion, quarterly and one time reporting requirements, recordkeeping and third party disclosure requirements.

*Obligation to Respond:* Required to obtain or retain benefits. The statutory authority for the collection is contained in Sections 1, 2, 4(i), 4(j), 225, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 303(r).

*Total Annual Burden:* 279,891 hours.

*Total Annual Cost:* $4,269,135.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals by the Commission.

*Privacy Impact Assessment:* This information collection affects individuals or households, and thus there are impacts under the Privacy Act. However, a third party, the individual or household's VRS or IP Relay provider, collects the information that is related to individuals or households; and the Commission has no direct involvement in this collection. As such, the Commission is not required to complete a privacy impact assessment. Further, VRS and IP Relay providers generally have written privacy policies governing the treatment of information collected from their users, and the Commission expects that much of the information collected here would fall under those policies.

*Needs and Uses:* On August 4, 2011 the Commission released *Report and*

*Order* FCC 11–123, published at 76 FR 59551, September 27, 2011, adopting final rules—containing information collection requirements—designed to improve assignment of telephone numbers associated with Internet-based Telecommunications Relay Service (iTRS). Specifically, the final rules, described below are designed to promote the use of geographically appropriate local numbers, while ensuring that the deaf and hard-of-hearing community has access to toll free telephone numbers that is equivalent to access enjoyed by the hearing community.

Below are the new and revised information collection requirements contained in the *Report and Order:*

*A. Provision of Routing Information*

In addition to provisioning their registered users' routing information to the TRS Numbering Directory and maintaining such information in the database, the VRS and IP relay providers must: (1) Remove from the Internet-based TRS Numbering Directory any toll free number that has not been transferred to a subscription with a toll free service provider and for which the user is the subscriber of record, and (2) ensure that the toll free number of a user that is associated with a geographically appropriate NANP number will be associated with the same Uniform Resource Identifier URI as that geographically appropriate NANP telephone number.

*B. User Notification*

In addition to the information that the Commission previously instructed VRS and IP Relay providers to include in the consumer advisories, VRS and IP Relay providers must also include certain additional information in their consumer advisories under the *Report and Order.* Specifically, the consumer advisories must explain: (1) The process by which a VRS or IP Relay user may acquire a toll free number from a toll free service provider, or transfer control of a toll free number from a VRS or IP Relay provider to the user; and (2) the process by which persons holding a toll free number may have that number linked to their ten-digit telephone number in the TRS Numbering Directory.

*C. Transferring Toll Free Numbers*

VRS and IP Relay providers that have already assigned or provided a toll free number to a VRS or IP Relay user must, at the VRS or IP Relay user's request, facilitate the transfer of the toll free number to a toll free subscription with a toll free service provider that is under the direct control of the user.

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–30119 Filed 11–21–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 050613158–5262–03]**

**RIN 0648–BB59**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning (PSP)

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

**ACTION:** Temporary rule; emergency action; extension of effective period; request for comments.

**SUMMARY:** This temporary rule extends a closure of Federal waters. The U.S. Food and Drug Administration has determined that oceanographic conditions and alga sampling data suggest that the northern section of the Temporary Paralytic Shellfish Poison Closure Area remain closed to the harvest of bivalve molluscan shellfish, with the exception of sea scallop adductor muscles harvested and shucked at sea, and that the southern area remain closed to the harvest of whole or roe-on scallops. The regulations contained in the temporary rule, emergency action, first published in 2005, and have been subsequently extended several times at the request of the U.S. Food and Drug Administration. NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times, so that the public is aware of the regulations being extended.

**DATES:** The amendments to § 648.14, in amendatory instruction 2, are effective from January 1, 2012, through December 31, 2012. The expiration date of the temporary emergency action published on December 8, 2010 (75 FR 76315), is extended through December 31, 2012. Comments must be received by December 23, 2011.

**ADDRESSES:** Copies of the Small Entity Compliance Guide, the emergency rule, the Environmental Assessment, and the Regulatory Impact Review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available via the Internet at *http://www.nero.noaa.gov/nero/hotnews/redtide/index.html.*

You may submit comments, identified by RIN 0648–BB59, by any one of the following methods:

- *Mail:* Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments on PSP Closure.''
- *Fax:* (978) 281–9135.
- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

*Instructions:* All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Jason Berthiaume, Fishery Management Specialist, *phone:* (978) 281–9177, *fax:* (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

On June 10, 2005, the U.S. Food and Drug Administration (FDA) requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption due to the presence in those waters of toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense,*

which can form blooms commonly referred to as red tides. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA (i.e., the Temporary PSP Closure Area). Since 2005, the closure has been extended several times and the area has been expanded and divided into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, and sea scallop adductor muscles harvested and shucked at sea. The current closure will expire on December 31, 2011, and this action extends this closure for one additional year, through December 31, 2012.

The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters bounded by the following coordinates specified in Table 1 below. Under this emergency rule, this area remains closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops.

TABLE 1—COORDINATES FOR THE NORTHERN TEMPORARY PSP CLOSURE AREA

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 43° 00′ N | 71° 00′ W |
| 2 | 43° 00′ N | 69° 00′ W |
| 3 | 41° 39′ N | 69° 00′ W |
| 4 | 41° 39′ N | 71° 00′ W |
| 5 | 43° 00′ N | 71° 00′ W |

The boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates specified in Table 2. Under this emergency rule, the Southern Temporary PSP Closure Area remains closed only to the harvest of whole or roe-on scallops.

TABLE 2—COORDINATES FOR THE SOUTHERN TEMPORARY PSP CLOSURE AREA

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 41° 39′ N | 71° 00′W |
| 2 | 41° 39′ N | 69° 00′ W |
| 3 | 40° 00′ N | 69° 00′ W |
| 4 | 40° 00′ N | 71° 00′ W |
| 5 | 41° 39′ N | 71° 00′ W |

**Classification**

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c). Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency, and public comment has been solicited concurrently with each of the extensions of this action, as detailed and responded to below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. Two comments have been received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. One commenter described the overall poor quality of water in Boston Harbor, but provided no evidence to back these claims. The other commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center (*http://oceanservice.noaa.gov/redtide/*), which can be accessed directly or through the Web site listed in the **ADDRESSES** section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule is not significant for the purposes of Executive Order 12866.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 17, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.14, paragraphs (a)(10)(iii) and (a)(10)(iv) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(10) * * *

(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms

and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43° 00′ N. lat., 71° 00′ W. long.;
(B) 43° 00′ N. lat., 69° 00′ W. long.;
(C) 41° 39′ N. lat., 69° 00′ W. long;
(D) 41° 39′ N. lat., 71° 00′ W. long.;
and then ending at the first point.

(iv) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 41° 39′ N. lat., 71° 00′ W. long.;
(B) 41° 39′ N. lat., 69° 00′ W. long.;
(C) 40° 00′ N. lat., 69° 00′ W. long.;
(D) 40° 00′ N. lat., 71° 00′ W. long.;
and then ending at the first point.

* * * * *

[FR Doc. 2011–30151 Filed 11–21–11; 8:45 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 76, No. 225

Tuesday, November 22, 2011

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Thielert Aircraft Engines GmbH (TAE) Reciprocating Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to revise an existing airworthiness directive (AD) that applies to TAE models TAE 125–01 and TAE 125–02–99 reciprocating engines installed on, but not limited to, Diamond Aircraft Industries Model DA 42 airplanes. The existing AD currently requires initial and repetitive replacements of proportional pressure reducing valves (PPRVs) (also known as propeller control valves). Since we issued that AD, TAE has increased the life of the PPRV, part number (P/N) 05–7212–E002801, on TAE 125–02–99 engines, from 300 hours to 600 hours. This proposed AD would relax the repetitive replacement interval from a 300-hour interval to a 600-hour interval for PPRVs, P/N 05–7212–E002801, on TAE 125–02–99 engines. We are proposing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

**DATES:** We must receive comments on this proposed AD by January 23, 2012.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany; *phone:* +49–37204–696–0; *fax:* +49–37204–696–2912; *email: info@centurion-engines.com*. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

### Examining the AD Docket

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

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On May 19, 2010, we issued AD 2010–11–09, Amendment 39–16314 (75 FR 32253, June 8, 2010), for TAE Models TAE 125–01 and TAE 125–02–99 reciprocating engines installed on, but not limited to, Diamond Aircraft Industries model DA 42 airplanes. That AD requires initial and repetitive replacements of PPRVs (also known as propeller control valves). That AD resulted from reports of in-flight shutdown (IFSD) incidents on Diamond Aircraft Industries DA 42 aircraft equipped with TAE 125 engines. Preliminary investigations showed that the IFSDs were mainly the result of failure of the PPRV. The European Aviation Safety Agency issued AD 2009–0224, dated October 20, 2009, to address this unsafe condition in Europe. We issued AD 2010–11–09 to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

### Actions Since Existing AD (75 FR 32253, June 8, 2010) Was Issued

Since we issued AD 2010–11–09, TAE performed a successful 600-hour endurance test of the PPRV, P/N 05–7212–E002801, for TAE 125–02–99 engines only, on a propeller test bench, The test also had the vibration isolator installed, which was introduced by AD 2010–11–09.

### Relevant Service Information

We reviewed TAE Service Bulletin (SB) No. TM TAE 125–1007 P1, Revision 3, dated October 17, 2011. The SB relaxes the PPRV repetitive replacement interval from 300 hours to 600 hours.

### FAA's Determination

We are proposing this AD revision, because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2010–11–09 (75 FR 32253, June 8, 2010), except the repetitive replacement interval in paragraph (e)(2). This proposed AD

would relax the repetitive 300-hour replacement interval to a 600 hour-interval.

## Costs of Compliance

We estimate that this AD would affect about 300 TAE 125–01 and TAE 125–02–99 reciprocating engines installed in Diamond Aircraft Industries Model DA 42 airplanes of U.S. registry. We also estimate that it would take about 0.25 work-hour per engine to replace a PPRV and install a vibration isolator to the gearbox assembly. The average labor rate is $85 per work-hour. Required parts would cost about $275 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $88,875.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

*For the reasons discussed above, I certify that the proposed regulation:*

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2010–11–09, Amendment 39–16314 (75 FR 32253, June 8, 2010), and adding the following new AD:

**Thielert Aircraft Engines GmbH:** Docket No. FAA–2009–0201; Directorate Identifier 2008–NE–47–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by January 23, 2012.

**(b) Affected ADs**

This AD revises AD 2010–11–09, Amendment 39–16314 (75 FR 32253, June 8, 2010).

**(c) Applicability**

This AD applies to Thielert Aircraft Engines GmbH (TAE) models TAE 125–01 and TAE 125–02–99 reciprocating engines designated with part number (P/N) 05–7200–K000301 or 02–7200–14017R1. The engines are installed on, but not limited to, Diamond Aircraft Industries Model DA 42 airplanes.

**(d) Unsafe Condition**

This AD was prompted by engine in-flight shutdown incidents reported on Diamond Aircraft Industries DA 42 airplanes equipped with TAE 125 engines. The investigations showed that it was mainly the result of failure of the proportional pressure reducing valve (PPRV) (also known as the propeller control valve) due to high vibrations. Since the release of European Aviation Safety Agency (EASA) AD 2008–0145, the engine gearbox has been identified as the primary source of vibrations for the PPRV, and it has also been determined that failure of the electrical connection to the PPRV could have contributed to some power loss events or in-flight shutdowns. We are issuing this AD to prevent engine in-flight shutdown, possibly resulting in reduced control of the aircraft.

**(e) Actions and Compliance**

Unless already done, do the following actions.

**(f) TAE 125–02–99 Reciprocating Engines**

(1) For TAE 125–02–99 reciprocating engines with engine, P/N 05–7200–K000301, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with PPRV, P/N 05–7212–E002801. Use paragraphs A. through B. of TAE Service Bulletin (SB) No. TM TAE 125–1007 P1, Revision 3, dated October 17, 2011, or SB No. TM TAE 125–1007 P1, Revision 2, dated April 29, 2009, to do the replacement.

(ii) Install a vibration isolator, P/N 05–7212–K022302, to the gearbox assembly. Use paragraphs 1 through 20 of TAE SB No. TM TAE 125–1009 P1, Revision 3, dated October 14, 2009, to do the installation.

**(2) Repetitive PPRV Replacements**

Thereafter, within every 600 flight hours, replace the PPRV, P/N 05–7212–E002801, with the same P/N PPRV.

**(g) TAE 125–01 Reciprocating Engines**

(1) For TAE 125–01 reciprocating engines with engine, P/N 02–7200–14017R1, within 55 flight hours after the effective date of this AD:

(i) Replace the existing PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401. Use paragraph 1 of TAE SB No. TM TAE 125–0018, Revision 1, dated November 12, 2008, to do the replacement.

(ii) Inspect the electrical connectors of the PPRV and replace the connectors if damaged, and install a vibration isolator, P/N 05–7212–K023801, to the gearbox assembly. Use paragraphs 1 through 27 of TAE SB No. TM TAE 125–0020, Revision 1, dated November 25, 2009, to do the inspection and installation.

**(3) Repetitive PPRV Replacements**

Thereafter, within every 300 flight hours, replace the PPRV with a PPRV, P/N NM–0000–0124501 or P/N 05–7212–K021401.

**(h) FAA Differences**

(1) We have found it necessary to not reference the second paragraph of the unsafe condition from the MCAI EASA AD 2009–0224. That sentence stated that the problem has only manifested itself on those TAE engines installed on Diamond Aircraft Industries DA 42 aircraft. The affected engines which require a PPRV could be used on other make and model airplanes in the future.

(2) We also did not reference the February 28, 2010 compliance date, which is in EASA AD 2009–0193R1, or the January 31, 2010 compliance date which is in EASA AD 2009–0224.

**(i) Alternative Methods of Compliance (AMOCs)**

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

**(j) Related Information**

(1) Refer to EASA AD 2009–0224, dated October 20, 2009 (TAE 125–02–99), and EASA AD 2009–0193R1, dated December 1, 2009 (TAE 125–01), for related information.

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

(3) For service information identified in this AD, contact Thielert Aircraft Engines GmbH, Platanenstrasse 14 D–09350, Lichtenstein, Germany, *phone:* +49–37204–696–0; *fax:* +49–37204–696–2912; *email: info@centurion-engines.com.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Issued in Burlington, Massachusetts, on November 10, 2011.

**Peter A. White,**

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

[FR Doc. 2011–30059 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–27023; Directorate Identifier 98–ANE–47–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to all Pratt & Whitney (PW) JT9D series turbofan engines. The existing AD currently requires revisions to the Airworthiness Limitations Section (ALS) of the manufacturer's Instructions for Continued Airworthiness (ICA) to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. Since we issued that AD, PW has added mandatory inspections for certain critical life-limited parts. This proposed AD would require additional revisions to the JT9D series engines ALS sections of the manufacturer's ICA. This proposed AD results from the need to require enhanced inspection of selected critical life-limited parts of JT9D series engines. We are proposing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**DATES:** We must receive comments on this proposed AD by January 23, 2012.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; *fax:* (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27023; Directorate Identifier 98–ANE–47–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

### Discussion

On March 1, 2007, we issued AD 2007–05–17, Amendment 39–14978 (72 FR 10350, March 8, 2007), for all PW JT9D series turbofan engines. That AD requires revisions to the ALS of the manufacturer's ICA to include required enhanced inspection of selected critical life-limited parts at each piece-part opportunity. We issued that AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

### Actions Since Existing AD (72 FR 10350, March 8, 2007) Was Issued

Since we issued AD 2007–05–17, an FAA study of in-service events involving uncontained failures of critical rotating engine parts has indicated the need for additional mandatory inspections. The mandatory inspections are needed to identify those critical rotating parts with conditions which, if allowed to continue in service, could result in uncontained engine failures. This proposal would require revisions to the JT9D series engines ALS sections of the manufacturer's manuals and an air carrier's approved continuous airworthiness maintenance program to incorporate additional inspection requirements.

### FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

### Proposed AD Requirements

This proposed AD would retain all of the requirements of AD 2007–05–17 (72 FR 10350, March 8, 2007). This proposed AD would supersede AD 2007–05–17 to require the following additional inspections:

- Adding eddy current inspections (ECIs) for web cooling holes in high-pressure turbine (HPT) stage 1 disks installed in engine models JT9D–3A, –7, –7A, –7AH, –7F, –7H, –7J, –20, and –20J engines;
- Adding ECIs for web cooling holes and tierod holes in HPT stage 2 disks installed in JT9D–59A and –70A engines;
- Adding ECIs for web cooling holes and tierod holes in HPT stage 2 disks installed in JT9D–7Q and –7Q3 engines;
- Adding ECIs for web cooling holes in HPT stage 2 disks, and for fan hub

slots, installed in JT9D–7R4 engines; and

• Adding ECIs for web cooling holes and tierod holes in HPT stage 2 disks installed in JT9D–7R4D, –7R4D1, –7R4E, and –7R4E1 engines.

This proposed AD would also add the Engine Manual Inspection Task and Sub Task Number references for these inspections.

## Identifying the Part Nomenclatures and Inspections Added

For reference, the part nomenclatures and inspections added to the table in the compliance section of this proposed AD are identified by two asterisks (**) that precede the part nomenclature.

## Costs of Compliance

We estimate that 438 JT9D series engines are installed on airplanes of U.S. registry and would be affected by this proposed AD. We also estimate that about 4 work hours per engine are needed to perform the proposed actions, and that the average labor rate is $85 per work hour. Since this is an added inspection requirement that will be part of the normal maintenance cycle, no additional parts costs are involved. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $148,920.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

*For the reasons discussed above, I certify that the proposed regulation:*

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2007–05–17, Amendment 39–14978 (72 FR 10350, March 8, 2007), and adding the following new AD:

**Pratt & Whitney:** Docket No. FAA–2007–27023; Directorate Identifier 98–ANE–47–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by January 23, 2012.

**(b) Affected ADs**

This AD supersedes AD 2007–05–17, Amendment 39–14978 (72 FR 10350, March 8, 2007).

**(c) Applicability**

This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7H, –7AH, –7F, –7J, –20J, –59A, –70A, –7Q, –7Q3, –7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 series turbofan engines.

**(d) Unsafe Condition**

This AD results from the need to require enhanced inspection of selected critical life-limited parts of JT9D series turbofan engines. We are issuing this AD to prevent critical life-limited rotating engine part failure, which could result in an uncontained engine failure and damage to the airplane.

**(e) Compliance**

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

**(f) Inspections**

Within the next 30 days after the effective date of this AD, add the following section to the Airworthiness Limitations Section (ALS) of your copy of the manufacturer's Instructions for Continued Airworthiness (ICA) and, for air carrier operations, to your continuous airworthiness air carrier maintenance program:

''MANDATORY INSPECTIONS''

(1) Inspect the following life-limited parts at each piece-part opportunity in accordance with the instructions provided in the applicable manual provisions:

| Engine model | Engine manual part No. (P/N) | Part nomenclature | Inspect per manual section | Inspection/check |
|---|---|---|---|---|
| 3A/7/7A/7AH/7F/7H/7J/20/20J. | *646028 (or the equivalent customized versions, 770407 and 770408). | All Fan Hubs | 72–31–04 | Inspection-02. |
| | | All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts. | 72–35–00 | Inspection-03. |
| | | All HPT Stage 1–2 Disks and Hubs | 72–51–00 | Inspection-03. |
| | | **All HPT Stage 1 Disk Web Cooling Holes | 72–51–02 | Inspection-06. |
| | | All HPT Stage 2 Disk Web Tierod Holes | 72–51–02 | Inspection-05. |
| | | All LPT Stage 3–6 Disks and Hubs | 72–52–00 | Inspection-03. |
| 59A/70A | 754459 | All Fan Hubs | 72–31–00 | Check-00. |
| | | All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts. | 72–35–00 | Check-00. |
| | | All HPT Stage 1–2 Disks and Hubs | 72–51–00 | Check-03. |

| Engine model | Engine manual part No. (P/N) | Part nomenclature | Inspect per manual section | Inspection/check |
|---|---|---|---|---|
| | | All HPT Stage 1 Disk Web Cooling Holes | 72–51–02 | Check-03. |
| | | **All HPT Stage 2 Disk Tierod and Web Cooling Holes. | 72–51–02 | Check-04. |
| | | All LPT Stage 3–6 Disks and Hubs | 72–52–00 | Check-03. |
| 7Q/7Q3 | 777210 | All Fan Hubs | 72–31–00 | Inspection-03. |
| | | All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts. | 72–35–00 | Inspection-03. |
| | | All HPT Stage 1–2 Disks and Hubs All HPT Stage 1 Disk Web Cooling Holes. | 72–51–00<br>72–51–06 | Inspection-03.<br>Inspection-03. |
| | | **All HPT Stage 2 Disk Tierod and Web Cooling Holes. | 72–51–07 | Inspection-03. |
| | | All LPT Stage 3–6 Disks and Hubs | 72–52–00 | Inspection-03. |
| 7R4 ALL | 785058, 785059, and 789328. | All Fan Hubs | 72–31–00 | Inspection/Check-03. |
| | | **All Fan Hub Slots | 72–31–01 | Inspection/Check-02. |
| | | All HPC Stage 5–15 Disks and Rear Compressor Drive Turbine Shafts. | 72–35–00 | Inspection/Check 03. |
| | | All HPT Stage 1–2 Disks and Hubs | 72–51–00 | Inspection/Check 03. |
| | | All LPT Stage 3–6 Disks and Hubs | 72–52–00 | Inspection/Check 03 |
| | | **All HPT Stage 2 Disk Tierod and Web Cooling Holes. | 72–51–07 | Inspection/Check-02. |
| 7R4D/D1/E/E1 | 785058 and 785059 | All HPT Stage 1 Disk Web Cooling Holes | 72–51–06 | Inspection/Check-02. |
| | | **All HPT Stage 2 Disk Tierod and Web Cooling Holes. | 72–51–07 | Inspection/Check-02. |

* P/N 770407 and 770408 are customized versions of P/N 646028 engine manual.
** Two asterisks identify the part nomenclatures and inspections added to the table.

(2) For the purposes of these mandatory inspections, piece-part opportunity means:

(i) The part is considered completely disassembled when disassembly is in accordance with the disassembly instructions in the manufacturer's engine shop manual; and

(ii) The part has accumulated more than 100 cycles-in-service since the last piece-part opportunity inspection, provided that the part was not damaged or related to the cause for its removal from the engine.''

(g) Except as provided in paragraph (h) of this AD, and notwithstanding contrary provisions in section 43.16 of the Federal Aviation Regulations (14 CFR 43.16), these mandatory inspections shall be performed only in accordance with the ALS of the manufacturer's ICA.

**(g) Alternative Methods of Compliance (AMOC)**

(1) You must perform these mandatory inspections using the ALS of the ICA and the applicable Engine Manual, unless you receive approval to use an AMOC under paragraph (h)(2) of this AD. Section 43.16 of the Federal Aviation Regulations (14 CFR 43.16) may not be used to approve alternative methods of compliance or adjustments to the times in which these inspections must be performed.

(2) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD, if requested using the procedures found in 14 CFR 39.19.

**(h) Maintaining Records of the Mandatory Inspections**

(1) You have met the requirements of this AD when you revise your copy of the ALS of the manufacturer's ICA as specified in paragraph (f) of this AD. For air carriers operating under part 121 of the Federal Aviation Regulations (14 CFR part 121), you have met the requirements of this AD when you modify your continuous airworthiness air carrier maintenance program as specified in paragraph (f) of this AD. You do not need to record each piece-part inspection as compliance to this AD, but you must maintain records of those inspections according to the regulations governing your operation. For air carriers operating under part 121, you may use either the system established to comply with section 121.369 or an alternative accepted by your principal maintenance inspector if that alternative:

(i) Includes a method for preserving and retrieving the records of the inspections resulting from this AD;

(ii) Meets the requirements of section 121.369(c); and

(iii) Maintains the records either indefinitely or until the work is repeated.

(2) These record keeping requirements apply only to the records used to document the mandatory inspections required as a result of revising the ALS of the manufacturer's ICA as specified in paragraph (f) of this AD. These record keeping requirements do not alter or amend the record keeping requirements for any other AD or regulatory requirement.

**(i) Related Information**

For more information about this AD, contact Stephen Sheely, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7750; *fax:* (781) 238–7199; *email: stephen.k.sheely@faa.gov.*

Issued in Burlington, Massachusetts, on November 15, 2011.

**Peter A. White,**

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

[FR Doc. 2011–30062 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## FEDERAL TRADE COMMISSION

## 16 CFR Part 301

## Regulations Under The Fur Products Labeling Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Announcement of public hearing.

**SUMMARY:** The Federal Trade Commission (''FTC'' or ''Commission'') will hold a public hearing on December 6, 2011, as part of the congressionally mandated review of its Fur Products Name Guide. The hearing will allow interested parties to present views on whether the Commission should amend the Fur Products Name Guide.

**DATES:** The hearing will be held on Tuesday, December 6, 2011, from 9 a.m. to 1 p.m. at the FTC's Satellite Building Conference Center, located at 601 New Jersey Avenue NW., Washington, DC 20001.

**REGISTRATION INFORMATION:** The hearing is open to the public, and there is no fee for attendance. If resources are available

for broadcasting, this hearing will be available via a webcast (check the FTC Web site, *http://www.ftc.gov,* for a webcast announcement). For admittance to the Conference Center, all attendees will be required to show a valid photo identification, such as a driver's license. The FTC will accept pre-registration for this hearing. Pre-registration is not necessary to attend, but is encouraged so that we may better plan this event. To pre-register, please email your name and affiliation to *mwilshire@ftc.gov.* When you pre-register, we will collect your name, affiliation, and your email address. This information will be used to estimate how many people will attend. We may use your email address to contact you with information about the hearing.

Under the Freedom of Information Act or other laws, we may be required to disclose to outside organizations the information you provide. For additional information, including routine uses of your information permitted by the Privacy Act, *see* the Commission's Privacy Policy at *http://www.ftc.gov/ftc/privacy.htm.* The FTC Act and other laws the Commission administers permit the collection of this contact information to consider and use for the above purposes.

**FOR FURTHER INFORMATION CONTACT:** Matthew Wilshire, (202) 326–2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The FTC will hold a public hearing on December 6, 2011, regarding whether to amend its Fur Products Name Guide (''Name Guide''), 16 CFR 301.0. This hearing is part of a review of the Name Guide, which is required by the Truth in Fur Labeling Act (''TFLA'').[1] On March 14, 2011, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') initiating the review,[2] seeking comment on the Name Guide as well as all of the Commission's regulations (''Fur Rules'') under the Fur Products Labeling Act (''Fur Act'').[3]

To implement any change to the Name Guide, the Fur Act requires the Commission to hold a public hearing.[4] Although the Commission has not determined whether to amend the Name Guide, it will hold a public hearing to consider the significant issues raised by the comments it received in response to the ANPR. Accordingly, the Commission issues this **Federal Register** Notice to announce the upcoming hearing and propose issues that attending parties should address.

This announcement first provides background on the Fur Act and Rules, the Name Guide, and the ANPR and the comments received in response. It then suggests issues for discussion at the hearing.

### *A. Fur Act and Rules*

The Fur Act prohibits misbranding and false advertising of fur products, and requires labeling of most fur products.[5] Pursuant to the Act, the Commission promulgated the Fur Rules to establish disclosure requirements that assist consumers in making informed purchasing decisions.[6] Specifically, the Fur Act and Rules require fur manufacturers, dealers, and retailers to place labels on products made entirely or partly of fur disclosing: (1) The animal's name as listed in the Name Guide; (2) the presence in the fur product of any used, bleached, dyed, or otherwise artificially colored fur; (3) the presence in the fur product of any paws, tails, bellies, or waste fur; (4) the name or Registered Identification Number of the manufacturer or other party responsible for the garment; and (5) the garment's country of origin.[7] In addition, manufacturers must include an item number or mark on the label for identification purposes.[8]

### *B. The Name Guide*

The Fur Act requires the Commission to maintain ''a register setting forth the names of hair, fleece, and fur-bearing animals.''[9] The Act further requires these names to ''be the true English names for the animals in question, or in the absence of a true English name for an animal, the name by which such animal can be properly identified in the United States.''[10] The Name Guide provides English names for fur-producing animals, listed by genus-species. For example, the Name Guide requires covered entities to label *vulpes fulva* as fox.[11]

The Commission first published the Name Guide in 1952. The Name Guide can only be amended under the Fur Act ''after holding public hearings.''[12] The Commission has done so twice, most recently in 1967.

### *C. ANPR and Comments on the Name Guide*

On December 18, 2010, the President signed TFLA. The law directed the Commission to begin a review of the Name Guide and provide the opportunity to comment on the Name Guide within 90 days. Accordingly, the Commission initiated a review of the Name Guide by publishing the ANPR on March 14, 2011. The ANPR sought comment on the Name Guide generally and on whether the Commission should alter the Name Guide's fur names in particular. As part of the Commission's comprehensive regulatory review program, the ANPR also sought comment on the Fur Rules.[13]

The Commission received 15 comments in response to the ANPR,[14] seven of which discussed the Name Guide.[15] One of the seven urged the Commission to add ''sheepskin'' as an allowed name.[16] The other six focused on the Name Guide's name for *nyctereutes procyonoidos.*[17] Currently, the Name Guide requires that fur industry members label this species ''Asiatic Raccoon.'' The Humane Society of the United States (''HSUS'') objected and asked the Commission to replace it with ''Raccoon Dog.'' HSUS first asserted that the ''true English name'' of an animal should be the name ''most widely accepted by the *scientific community.*''[18] To gauge scientific consensus, HSUS suggested that the Commission use the names specified by the Integrated Taxonomic Information System (''ITIS''), ''a partnership of federal governmental agencies formed to

[1] Public Law 111–313.

[2] *Federal Trade Commission: Advance notice of proposed rulemaking: request for comment,* 76 FR 13550 (Mar. 14, 2011).

[3] 15 U.S.C. 69–69j.

[4] 15 U.S.C. 69e(b).

[5] 15 U.S.C. 69 *et seq.*

[6] 16 CFR part 301.

[7] 15 U.S.C. 69b(2); 16 CFR 301.2(a).

[8] 16 CFR 301.40.

[9] 15 U.S.C. 69e(a).

[10] *Id.*

[11] 16 CFR 301.0.

[12] 15 U.S.C. 69e(b).

[13] For further discussion of the program, *see www.ftc.gov/opa/2011/07/regreview.shtm.*

[14] The comments are available at *http://www.ftc.gov/os/comments/furlabeling.*

[15] The Commission will respond to comments regarding Fur Rules other than the Name Guide at a later date.

[16] *See* Deckers Outdoor Corporation Comment at 8–9.

[17] Two of these comments also discussed issues unrelated to *nyctereutes procyonoidos.* First, the Fur Information Council of America noted what it described as ''factual and typographical errors'' in the Name Guide and requested that the Commission remove names of certain prohibited species, such as dog and cat. See Fur Information Council of America Comment at 7–8. Second, the Humane Society of the United States objected to the Name Guide's use of one common name for multiple animals and suggested updating several names that ''are no longer the accepted common name, appear to have never been the accepted common name, or even appear to be trade names, and would not properly inform the consumer.'' Humane Society of the United States Comment at 9.

[18] HSUS comment at 7 (emphasis in original).

satisfy the need for scientifically credible taxonomic information.'' [19] HSUS noted that ITIS lists the common name of *nyctereutes procyonoidos* as ''Raccoon Dog,'' and presented evidence that the scientific community refers to the species by that name.[20] Finally, HSUS asserted that the name ''Asiatic Raccoon'' may confuse consumers because the animal is also found in Europe.[21]

In contrast, the Fur Information Council of America (''Fur Council'') and the National Retail Federation (''NRF'') supported retaining ''Asiatic Raccoon.'' The Fur Council asserted that the name ''Raccoon Dog'' would mislead consumers because *nyctereutes procyonoidos* is no more closely related to domestic dogs than foxes, wolves, or coyotes.[22] In addition, the Fur Council stated that ''[w]ere the Commission to require the use of the term 'raccoon dog,' there would no longer be a market for Asiatic/Finnraccoon fur, and garments with this type of fur would be eliminated.'' [23] NRF concurred with the Fur Council's view that *nyctereutes procyonoidos* is ''not a true-dog or dog-like canine,'' and suggested retaining ''Asiatic Raccoon'' or changing it to ''Tanuki'' or ''Magnut.'' [24]

Finally, the Fur Council and Finnish Fur Sales, supported by the Finnish Ministry for Foreign Affairs and Ministry of Agriculture and Forestry, suggested allowing the name ''Finnraccoon'' for *nyctereutes procyonoidos* raised in Finland. These commenters noted that calling such furs ''Asiatic Raccoon'' could mislead consumers because ''finraccoons'' are not from Asia and are raised under different conditions than those that generally exist in Asia.[25]

## II. Issues for Discussion at the Hearing

The Commission invites attendees to share views on any aspect of the Name Guide at the hearing. The Commission specifically requests views on: (1) The appropriateness of using the ITIS system to determine an animal's true English name; (2) whether using the name ''Asiatic Raccoon'' to describe *nyctereutes procyonoidos* fur products accurately informs consumers about the source, quality, and characteristics of those products; (3) what, if any, alternative name, including ''Tanuki'' or ''Magnut,'' should the Name Guide require for *nyctereutes procyonoidos;* (4) whether the Name Guide should allow ''Finnraccoon'' for *nyctereutes procyonoidos* raised in Finland; and (5) whether the Commission should modify, add, or delete other names.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 2011–30050 Filed 11–21–11; 8:45 am]

**BILLING CODE 6750–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 11

**[Docket No. RM11–6–000]**

## Annual Charges for Use of Government Lands

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Power Act requires hydropower licensees to recompense the United States for the use, occupancy, and enjoyment of its lands. The Commission assesses annual charges for the use of Federal lands through Part 11 of its regulations. The Commission is proposing to revise the methodology used to compute these annual charges. Under the proposed rule, the Commission would create a fee schedule based on the U.S. Bureau of Land Management's (BLM) methodology for calculating rental rates for linear rights of way. This methodology includes a land value per acre, an encumbrance factor, a rate of return, and an annual adjustment factor. The fee schedule would include all adjustments described in the BLM rule adopting this methodology, except the allocation of county land values into zones. In addition, the Commission proposes to eliminate its current practice of doubling the per-acre rental rate for non-transmission line lands.

**DATES:** Comments are due January 6, 2012.

**ADDRESSES:** Comments, identified by docket number, may be filed by the following methods:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Doug Foster, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6118, *doug.foster@ferc.gov*.

Kimberly Ognisty, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8565, *kimberly.ognisty@ferc.gov*.

**SUPPLEMENTARY INFORMATION:**

## Notice of Proposed Rulemaking

November 17, 2011.

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[19] *Id.*

[20] *Id.* at 8–9.

[21] *Id.* at 9.

[22] Fur Council Comment at 5.

[23] *Id.* at 6.

[24] NRF Comment at 4.

[25] *See, e.g.,* Fur Council Comment at 3–4; Finnish Fur Sales comment at 1–2.

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1. The Federal Power Act (FPA) requires licensees using Federal lands to recompense the United States for the use, occupancy, and enjoyment of its lands.[1] The Commission has assessed this portion of annual charges at rental rates established by the U.S. Bureau of Land Management (BLM) (and adopted by the U.S. Forest Service), which are published annually in a fee schedule that identifies per-acre rental rates by state and county for linear rights of way. Under the proposed rule, the Commission would create a fee schedule based on the BLM methodology promulgated in 2008 for calculating rental rates for linear rights of way. This methodology includes a land value per acre, an encumbrance factor, a rate of return, and an annual adjustment factor. The Commission-created fee schedule would base county land values on average per-acre values from the National Agricultural Statistics Service (NASS) Census, and would not use the zone system adopted by the 2008 BLM rule. All other adjustments to the formula components described in the BLM rule would apply to the Commission's creation of a fee schedule.[2] In addition, the Commission proposes to eliminate its current practice of doubling the rental rate for non-transmission line lands.

## I. Background

2. Section 10(e)(1) of the Federal Power Act (FPA) requires Commission hydropower licensees using Federal lands to:

> pay to the United States reasonable annual charges in an amount to be fixed by the Commission * * * for recompensing [the United States] *for the use, occupancy, and enjoyment of its lands or other property* * * * and in fixing such charges the Commission shall seek to avoid increasing the price to the consumers of power by such charges, and any such charges may be adjusted from time to time by the Commission as conditions may require * * *.[3]

In other words, where hydropower licensees use and occupy Federal lands for project purposes, they must compensate the United States through payment of an annual fee, to be established by the Commission.[4]

3. Over time, the Commission has adopted a number of methodologies to effectuate this statutory directive. This has included conducting project-by-project appraisals,[5] charging a single national average land value per acre,[6] and using a fee schedule for linear rights of way developed jointly by the BLM and Forest Service.[7]

4. From 1937 to 1942, the Commission based annual charges for the use of Federal lands by hydropower licensees on individual land appraisals for each project.[8] In 1942, the Commission rejected this approach in favor of a single national average per-acre land value because it determined that project-by-project appraisals were more costly to administer than the value collected in rent, the values for inundated lands would become distorted, the values could only be maintained with re-appraisals, and disputes over values may lead to costly litigation.[9] Eventually, the Commission also rejected the use of a single national average per-acre land value because the Inspector General of the Department of Energy concluded that this methodology resulted in an under-collection of over $15 million per year due to the use of outdated land values.[10]

5. In 1987, the Commission adopted use of a fee schedule developed by the BLM and Forest Service that identified per-acre rental rates by county for linear rights of way on Federal lands.[11] BLM and Forest Service produced the fee schedule by taking a survey of market values by county for the various types of land that the agencies had allowed to be occupied by linear rights of way.[12] The range of per-acre land values was divided into eight zones, and each zone value was pegged to the highest raw value within that zone.[13] The rental rate in the fee schedule was calculated by multiplying the zone value by an encumbrance factor of 70 percent,[14] a rate of return of 6.41 percent, and an annual inflation adjustment factor. The resulting fee schedule assigned one of eight rental rates to all counties.[15]

6. BLM would use individual land appraisals to substitute for the fee schedule rental rate only if the resulting rent would be significantly higher than that produced by the schedule.[16]

7. In adopting the 1987 BLM fee schedule, the Commission found that the methodology promulgated by BLM and Forest Service for linear rights of way was the ''*best approximation*

[1] 16 U.S.C. 803(e)(1) (2006).

[2] *Update of Linear Right-of-Way Rent Schedule,* 73 FR 65040 (October 31, 2008) (codified at 43 CFR 2806.20–2806.23).

[3] 16 U.S.C. 803(e)(1) (2006) (emphasis added). Section 10(e)(1) also requires licensees to reimburse the United States for the costs of the administration of Part I of the FPA. Those charges are calculated and billed separately from the land use charges, and are not the subject of this proposed rule.

[4] Pursuant to FPA section 17(a), 16 U.S.C. 810(a) (2006), the fees collected for use of government lands are allocated as follows: 12.5 percent is paid into the Treasury of the United States, 50 percent is paid into the federal reclamation fund, and 37.5 percent is paid into the treasuries of the states in which particular projects are located. No part of the fees discussed in this proposed rule is used to fund the Commission's operations.

[5] *See Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges,* Order No. 469, FERC Stats. & Regs., Regulations Preambles ¶ 30,741, at 30,584 (1987).

[6] *Id. See also Order Prescribing Amendment to Section 11.21 of the Regulations Under the Federal Power Act,* Order No. 560, 56 FPC 3860 (1976).

[7] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,584.

[8] *See* 56 FPC 3860 at 3863.

[9] *See* 56 FPC 3860 at 3863–64.

[10] *See* Assessment of Charges under the Hydroelectric Program, DOE/IG Report No. 0219 (September 3, 1986); see also More Efforts Needed to Recover Costs and Increase Hydropower Charges, U.S. General Accounting Office Report No. RCED–87–12 (November 1986). The single national average land value per acre in 1942 was $50 per acre, and, by 1976, the value was $150 per acre. 56 FPC 3860.

[11] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,584.

[12] 51 FR 44014 (Dec. 5, 1986). BLM explained that the value of timber had not been included, and that the values were not for urban or suburban residential areas, industrial parks, farms or orchards, recreation properties or other such types of land. The agencies tried to avoid using attractive public use areas such as lakeshores, streamsides, and scenic highways frontage.

[13] The per-acre zone values were $50, $100, $200, $300, $400, $500, $600, and $1000.

[14] The encumbrance factor adjusts the zone value to reflect the degree that a particular type of facility encumbers the right-of-way area or excludes other types of land uses. If the encumbrance factor is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses.

[15] The per-acre zone fee under the 1987 BLM fee schedule ranged from $2.24 to $44.87. By 2008, the per-acre zone fee under the 1987 BLM fee schedule, having been adjusted each year for inflation, ranged from $3.76 to $75.23.

[16] 51 FR 44014 (Dec. 5, 1986). BLM would use individual appraisals only if it could be determined that sufficient area within a right of way would, at a minimum, exceed the zone value by a factor of ten and the expected return was sufficient to initiate a separate appraisal.

*available* of the value of lands used for transmission line rights-of-way.'' [17] Therefore, the Commission assessed the schedule rate for transmission line rights of way on Federal lands, and doubled this rate for other project works on Federal lands (*e.g.,* dams, powerhouses, reservoirs) because, historically, appraisers had determined that the market value of transmission line rights of way is roughly half of the market value of other land.[18]

8. In the 1987 proceeding, the Commission found no merit to claims that charging fair market value for Federal lands is prohibited by the FPA:

> All increases in charges will result in some impact on consumers. The statutory provision bars the Commission from assessing unreasonable charges that would be passed along to consumers. Reasonable annual charges are those that are proportionate to the value of the benefit conferred. Therefore, a fair market approach is consistent with the dictates of the Act. Furthermore, as land values have not been adjusted in over ten years, an adjustment upwards is warranted and overdue.[19]

The Commission also rejected the argument that it should intentionally set low land charges based on the public benefits provided by hydropower projects. The Commission explained that the public benefits provided by licensed projects are considered in the licensing decision and these benefits are the *quid pro quo* for the ability to operate the project in a manner consistent with the needs of society. In contrast, the purpose of the rental fee is to establish a fair market rate for the use of government land.[20]

9. In adopting the 1987 BLM fee schedule, the Commission rejected several other proposed methods of assessing annual charges for the use, occupancy, and enjoyment of government lands by hydropower licensees. The Commission rejected a proposal to use an agricultural land value index created by the U.S. Department of Agriculture (USDA), which used a state-by-state average value per acre of farm lands and buildings, concluding that this index would require such major adjustments that it would be an inefficient measure of land value for hydropower projects.[21] The Commission also rejected a proposal to assess a fee based on the percentage of gross revenues from power sales or a rate per kilowatt hour, concluding that such methods would be unreasonable because they would result in a royalty as though the occupied Federal lands themselves were producing power. The Commission explained that this would overlook the fact that power output is the result of many factors (*e.g.,* water rights, head, project structures), and not just the acreage of the Federal lands involved.[22] Finally, the Commission again rejected a proposal to use individual project appraisals because such appraisals would be too costly and result in time-consuming litigation.[23]

10. From 1987 to 2008, the Commission assessed annual charges for the use, occupancy, and enjoyment of government lands according to the BLM fee schedule. Each year, BLM adjusted the fee schedule for inflation, and each year the Commission published notice of the updated schedule.[24]

11. In 2005, Congress passed the Energy Policy Act (EPAct) of 2005, which required BLM ''to update [the schedule] to revise the per acre rental fee zone value schedule * * * to reflect current values of land in each zone.'' [25] Congress further ordered that ''the Secretary of Agriculture shall make the same revision for linear rights-of-way * * * on National Forest System land.''

12. On October 31, 2008, BLM issued a final rule promulgating its updated rental schedule for linear rights of way to satisfy the congressional mandate in EPAct 2005,[26] and the Forest Service subsequently adopted the 2008 BLM fee schedule.[27] As had been the case with the methodology underlying the 1987 BLM fee schedule, the updated fee schedule is based on the same formula, which has four components: (1) An average per-acre land value by county (grouped into zones); (2) an encumbrance factor reduction; (3) a rate of return; and (4) an annual adjustment factor for inflation.

13. Under the updated 2008 BLM fee schedule, the per acre land value by county is based on the NASS Census data. To determine a county per-acre land value, BLM uses the average per acre land value from the ''land and buildings'' category of the NASS Census. The ''land and buildings'' category is a combination of NASS Census land categories, and includes irrigated and non-irrigated cropland, pastureland, rangeland, woodland, and the ''other'' category, which includes roads, ponds, wasteland, and land encumbered by non-commercial or non-residential buildings. BLM consulted with officials from NASS to arrive at an appropriate method for removing the value of irrigated cropland and land encumbered by buildings because these types of land are generally of higher value than the types of lands over which rights of way would be granted. This resulted in a reduction in the average per-acre land value by 20 percent (a 13 percent reduction to remove all irrigated acres and a 7 percent reduction to remove all lands in the ''other'' category, which includes all improved land or land encumbered by buildings) ''to eliminate the value of all land that could possibly be encumbered by buildings or which could possibly have been developed, improved, or irrigated.'' [28]

14. In response to comments that the non-irrigated cropland category also represented higher value lands and therefore should be removed from the ''land and buildings'' category, BLM explained that in comparing the categories from the NASS Census data, it found little difference in the mid-western and western states between the average per acre values of non-irrigated cropland and pastureland/rangeland.[29] Furthermore, if the non-irrigated lands category were removed from the per-acre average, the per-acre average would undervalue Federal land holdings in the eastern U.S., including Forest Service lands, that have largely been acquired from the private sector (primarily farm real estate) and would likely fall into the same land categories covered by the NASS Census.[30]

15. In response to comments objecting to the zone system, BLM explained that it chose to retain the zone system because the 2005 congressional mandate directed it to revise the schedule to reflect current land values in each zone. BLM also explained that it considered using the midpoint of the zone value to base its calculations instead of the upper limit. It chose not to do this because it would have been significantly different from the methodology used in

[17] Order No. 469, FERC Stats. & Regs. ¶ 30,741 at 30,588 (emphasis added).

[18] *Id.* at 30,589.

[19] *Id.* (footnotes omitted).

[20] *Id.* at 30,587.

[21] *Id.* at 30,589. The potential adjustments included accounting for farm buildings, for the cleared, arable, level land that it represented, and for the fact that the index represented private and not federal lands.

[22] *Id.* at 30,589–90.

[23] *Id.* at 30,590.

[24] *See, e.g., Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Charges for the Use of Government Lands,* 73 FR 3626 (Jan. 22, 2008), FERC Stats. & Regs. ¶ 31,262 (2008).

[25] 42 U.S.C. 15925 (2006).

[26] *Update of Linear Right-of-Way Rent Schedule,* 73 FR 65040.

[27] *See Fee Schedule for Linear Rights-of-Way Authorized on National Forest System Lands,* 73 FR 66591 (November 10, 2008). The Forest Service noted it had given notice, in the preambles to BLM's proposed and final rules, that it would adopt BLM's revised fee schedule.

[28] 73 FR 65040 at 65043.

[29] *Id.* at 64044.

[30] *Id.*

the previous schedule (which used the upper zone amount) and its use would have generated significantly lower per acre rent amounts, even though land values have generally increased. Because of the larger range in values, the 2008 fee schedule included twelve zones rather than eight.

16. BLM will update the per-acre land values by county every five years on a defined schedule that is linked to the NASS Census updates, which are also updated every five years. Therefore, the 2011–2015 fee schedules would be based on the 2007 NASS Census data,[31] adjusting in intermediary years with an annual inflation adjustment factor, the 2016–2020 fee schedules would be based on the 2012 NASS Census, the 2021–2025 fee schedules would be based on the 2017 NASS Census, and so on.

17. In promulgating the 2008 fee schedule, BLM made additional changes to the methodology underlying the fee schedule. BLM reduced the encumbrance factor from 70 percent to 50 percent after a review of public comments, industry practices in the private sector, and the Department of Interior's appraisal methodology for right-of-way facilities on Federal lands.[32] BLM revised the fixed rate of return downward from 6.41 percent to 5.27, which is the 10-year average (1998–2008) of the 30-year and 20-year Treasury bond yield rate.[33] To stay current with inflationary or deflationary trends, BLM will apply an annual adjustment factor, which is currently 1.9 percent, to the per-acre rental rate in the fee schedule.[34] The annual adjustment factor is based on the average annual change in the Implicit Price Deflator-Gross Domestic Product (IPD–GDP) for the 10-year period immediately preceding the year that the NASS Census data become available.[35] The BLM rule makes clear that the fee schedule is the only basis for determining an annual rental fee for rights of way on Federal lands.[36]

18. On February 17, 2009, the Commission issued notice (February 17 Notice) of the 2008 BLM fee schedule, which was based on its revised methodology, as it had done for every annual update to the 1987 fee schedule.[37] Because of the land value revisions and methodology adjustments in response to EPAct 2005, the 2008 fee schedule resulted, in some cases, in significantly higher annual charge assessments of Commission licensees.[38]

19. On March 6, 2009, a group of licensees requested rehearing of the February 17 Notice, which the Commission denied.[39] The licensees petitioned for review of the Commission's orders in the United States Court of Appeals for the District of Columbia Circuit. On January 4, 2011, the Court granted the petition for review and vacated the Commission's February 17 Notice.[40] The DC Circuit found that the Commission is required by the Administrative Procedure Act to seek notice and comment on the methodology used to calculate annual charges because the Commission's fee schedule is based on the BLM fee schedule, and BLM has made changes to the methodology underlying its fee schedule.

20. On February 17, 2011, the Commission issued a Notice of Inquiry soliciting comments on proposed methodologies for assessing annual charges for the use, occupancy, and enjoyment of Federal lands by hydropower licensees. The Notice of Inquiry identified five requirements that any proposed methodology should satisfy, which are derived from the Commission's statutory obligations under the FPA and the Commission's past practice in implementing various methodologies. Any proposed methodology must: (1) apply uniformly to all licensees; (2) avoid exorbitant administrative costs; (3) not be subject to review on an individual basis; (4) reflect reasonably accurate land valuations; and (5) avoid an unreasonable increase in costs to consumers.

## II. Comments on Notice of Inquiry

21. In response to the Notice of Inquiry, comments were filed by eight entities representing licensees, industry trade groups, and Federal agencies. No commenters suggested, and the Commission is unaware of, any existing index other than the NASS Census to determine per acre rental rates by county.

22. *2008 BLM Fee Schedule.* The Forest Service is the only commenter that recommends straight-forward adoption of the 2008 BLM fee schedule for assessing annual charges for the use of Federal lands by hydropower licensees. The Forest Service identified several advantages to adopting the BLM fee schedule, including: (1) Consistent application of linear rights-of-way rental values among Federal agencies; (2) parity in rental rates for projects licensed or exempted from licensing under the FPA; and (3) reduced administrative burden because BLM maintains and updates the schedule with periodic revisions to reflect changes in land values, treasury rates, and inflation.

23. *Per-Acre Land Value.* The Federal Lands Group[41] believes that the NASS Census land values should be reduced by 50 percent, instead of the 20 percent reduction incorporated into the BLM fee schedule, to reflect the fact that lands used for hydropower projects rarely have any value for agricultural purposes. The Federal Lands Group also recommends that the Commission use actual county land values from the NASS Census instead of the zone values created by BLM, which would result in a more accurate valuation of the project lands, with only minimal additional burden on the Commission because it is responsible for assessing Federal lands charges for fewer than 250 projects.

24. Similarly, Southern California Edison (SCE) generally supports use of the 2008 BLM fee schedule but believes that the 20 percent reduction in per-acre county land value does not properly account for the reduced value of vacant land. SCE recommends the Commission use the pastureland average value per acre category from the NASS Census to capture the value of vacant, unimproved lands. In addition, SCE recommends the Commission adjust downward the land values from the NASS Census because of the dramatic decrease in value that has occurred since the 2002 NASS Census.

25. Idaho Power Company (Idaho Power) believes that in order to accurately reflect the fair market value of Federal lands, the NASS Census land and buildings category should be reduced by an additional 26 percent for a total reduction of 46 percent.

[31] There is an 18-month delay in NASS's publication of the census data. In BLM's administration of its formula, it provides another 18-month delay to allow notice of any changes in applicable county values.

[32] *Id.* at 65047.

[33] *Id.* at 65049.

[34] *Id.* at 65050.

[35] The annual adjustment factor will be updated every ten years.

[36] If lands are to be transferred out of federal ownership, BLM allows a right-of-way occupier to submit an appraisal report to determine a one-time rental payment for perpetual linear grants or easements.

[37] *Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands,* 74 FR 8184 (Feb. 24, 2009) FERC Stats. & Regs. ¶ 31,288 (2009).

[38] However, a handful of licensees, in geographical locations throughout the country, had their rates reduced.

[39] *Update of the Federal Energy Regulatory Commission's Fee Schedule for Annual Changes for the Use of Government Lands,* 129 FERC ¶ 61,095 (2009).

[40] *City of Idaho Falls, Idaho* v. *FERC,* 629 F.3d 222 (D.C. Cir. 2011).

[41] The Federal Lands Group is a group of 16 private and municipal licensees that operate 37 licensed projects in the western U.S.

26. The National Hydropower Association (NHA) argues that any methodology based on an agricultural index, without an adjustment to more accurately capture the character of lands present at hydroelectric project, is inherently flawed because the lands typically present at hydroelectric projects are steeply sloped, rocky, and remote.

27. PG&E objects to the use of the NASS Census for per acre county land values because the land values reflect values from the beginning of the real estate bubble and may have improperly inflated the true value of the government lands. PG&E states that an agricultural index overvalues government lands used by hydroelectric projects, and points out that the Commission previously found, in Order No. 469, that farm land values were typically much higher than the value of Federal land used for hydroelectric projects.

28. *Individual Appraisals.* The Federal Lands Group argues that the Commission should provide a limited opportunity for a licensee, at its own expense, to demonstrate through periodic, independent appraisals the actual fair market value of Federal lands at a project.

29. Placer County also supports a mechanism for individual licensees to demonstrate, at their own expense, that the fair market value of the Federal lands at a hydropower project are substantially less than the annual charges billed by the Commission. Placer County suggests that a licensee could submit a land sales value appraisal performed by a state certified and licensed real estate appraiser. If that appraised value is substantially lower than the assumed land value used to derive the Commission's default annual charges, then the Commission should adjust the charges.

30. Placer County proposes two alternative approaches to making this adjustment. First, the Commission could reassign the specific project to the BLM fee schedule zone that corresponds to the appraised land value. Second, the Commission could develop a project-specific multiplier based on the difference between the values yielded by the default methodology and the individual assessment. For each subsequent year, the charge yielded by the default methodology would be multiplied by the same percentage. Under either of these proposals, licensees could be required to provide an updated appraisal periodically in order to continue to be assessed a rate other than that produced by the default methodology.

31. NHA also recommends that the Commission allow an alternative land valuation method on a case-by-case basis to resolve anomalies that may occur in the application of an index-based valuation system.

32. PG&E objects to independent appraisals on a case-by-case basis because such a practice would be time consuming and would result in exorbitant administrative costs, ultimately resulting in increased annual charge assessments to licensees for the administration of Part I of the FPA. However, PG&E believes that it might be appropriate for the Commission to allow a licensee to challenge the application of a uniform formula, if it results in an inappropriate annual charge given the peculiar characteristics of particular projects.

33. *Encumbrance Factor.* The Federal Lands Group argues that the encumbrance factor should be 30 percent because, unlike other energy infrastructure, hydroelectric projects encumber Federal lands minimally, and substantially enhance the management objectives of the Federal lands management agencies.

34. Placer County also argues that the Federal lands rental fee should be reduced because hydropower licensees do not fully encumber the Federal lands within their projects, much of those lands remain available for other uses, the Federal government retains significant rights in its lands, and licensees use the Federal lands within their projects to provide benefits to the public. Placer County suggests that the Commission adopt an encumbrance factor between 30 and 50 percent for all project areas occupying Federal lands.

35. SCE believes that a 50 percent encumbrance factor is the highest that is appropriate for a hydropower facility, and that the Commission should consider a public benefit credit system to offset the encumbrance factor when it is determined a hydropower facility provides recreational and other benefits to the general public (*e.g.,* recreational activities, flood control, or water storage).

36. Idaho Power also believes an encumbrance factor of 100 percent for non-transmission line lands is inappropriate because Federal landowners such as BLM and Forest Service issue commercial permits and collect fees for the use of project lands, and licensees are required to make significant investment for the protection of Federal lands from natural and manmade impacts or enhancements to Federal lands. Idaho Power believes an appropriate encumbrance factor is zero.

37. NHA believes that the hydropower industry's contributions to multiple use of Federal lands should be reflected in the Commission's valuation method by significantly reducing the level of encumbrance of hydropower projects on Federal lands. NHA states that Commission-issued licenses reserve authority for Federal land management agencies to authorize non-project uses on Federal lands within the project boundary, such as flood control, navigation, and storage for water supply and irrigation. NHA further states that many projects significantly enhance the multiple use management of the lands they occupy by providing recreational attractions such as fishing, boating, camping, and other activities, and many licensees also provide funding to the land managing agency in addition to the recreation facilities they construct, operate, and maintain.

38. *Non-Transmission Line Lands.* The Federal Lands Group, PG&E, Idaho Power, NHA, and SCE object to the Commission's practice of automatically doubling the linear rights-of-way fee for non-transmission line project areas because this practice does not recognize that these other project areas are frequently used for non-hydroelectric purposes, such as public recreation, private recreation (e.g., residential boat docks), and general environmental preservation, and are accessible by the general public for a variety of uses. PG&E also argues that, in the case of government lands administered by the Forest Service, the Forest Service reserves to itself the right to use, or to permit others to use, project lands for any purpose. PG&E suggests that the Commission charge some lesser factor than doubling for non-transmission line project areas.

39. *Rate of Return and Annual Adjustment Factor.* SCE recommends use of the 30-year Treasury Bond rate rather than the 10-year average of the 30-year Treasury bond yield rate because the former is a more accurate valuation of a long-range asset. SCE proposes that the Commission use the IPD–GDP to track inflation of land values annually.

40. *1987 Fee Schedule.* PG&E recommends the Commission continue use of the 1987 BLM fee schedule, with annual adjustments for inflation. PG&E states that it recognizes that Congress appeared to believe the BLM fee schedule for linear rights of way did not reflect current land values, but asserts there is no indication in the statutory provision that Congress intended that the Commission use the revised fee schedules for hydroelectric projects, or

that the use of the 1987 BLM fee schedule was inappropriate.

41. *Income- or Generation-Based Methodologies.* PG&E and NHA object to any methodology for assessing annual charges that would use an income- or generation-based methodology to establish annual land use charges.

42. *Phase-In of New Fee Schedule.* PG&E requests that the increase in annual charges be phased in over a number of years thereby avoiding an increase to the price of consumers of power.

43. *Edison Electric Institute.* The Edison Electric Institute (EEI) endorses the comments submitted by the Federal Lands Group, PG&E, SCE, Idaho Power, and NHA. EEI emphasizes the importance of such factors as the rural, unfarmed, undeveloped nature of hydropower project lands, the local nature of land values, the modest encumbrance of Federal lands used by hydropower facilities, changes in land values from year to year, use of reasonable long-term discount rates, and the need for project-by-project adjustments in fee assessments.

## III. Proposed Rule

44. The Commission proposes to adopt the 2008 BLM methodology for creating a fee schedule of rental rates by county to assess annual charges for the use, occupancy, and enjoyment of Federal lands by hydropower licensees. Four components comprise the proposed formula: (1) An average per-acre land value by county based on the ''land and buildings'' category from the NASS Census; (2) an encumbrance factor; (3) a rate of return; and (4) an annual adjustment factor. The Commission proposes to use this methodology to create its own schedule, based on the NASS Census, without using the zone system incorporated into the BLM fee schedule. Except for this difference, the Commission proposes to adopt all other aspects of the BLM methodology for producing a fee schedule to assess rental rates for the use of Federal lands. In addition, the Commission proposes to eliminate the current practice of doubling the fee schedule rate for non-transmission line lands. The proposed rule does not include a graduated phase-in rate for the new schedule. Thus, the Commission would assess annual charges for the use of Federal lands by multiplying the rate in its fee schedule by the number of Federal acres occupied by a licensee.

45. The per-acre land value would be based on the NASS Census, adjusted downward to remove the value of irrigated lands and buildings, and would be updated with current land values every five years. The encumbrance factor, which adjusts for the degree to which an occupation of Federal lands precludes other uses, would be 50 percent. The rate of return, which converts the per-acre land value into an annual rental value, would be 5.27 percent. Finally, the annual adjustment factor, which adjusts the rental rate to reflect inflationary or deflationary trends, would be 1.9 percent, and would be adjusted every ten years.

46. The Commission proposes to track BLM's timing for incorporating the periodic updates to the NASS Census data. Therefore, the Commission's 2011–2015 fee schedules would be based on the 2007 NASS Census data,[42] adjusting in intermediary years with the annual adjustment factor, the 2016–2020 fee schedules would be based on the 2012 NASS Census, the 2021–2025 fee schedules would be based on the 2017 NASS Census, and so on. The annual adjustment factor would be revised every ten years, and the encumbrance factor and rate of return would remain unchanged unless by future rulemaking.

### *A. Per-Acre Land Value*

47. The Commission proposes to adopt BLM's practice of creating a per-acre land value by using the ''land and buildings'' category from the NASS Census. The ''land and buildings'' category is a combination of all the land categories in the NASS Census, and includes croplands (irrigated and non-irrigated), pastureland/rangeland, woodland, and ''other'' (roads, ponds, wasteland, and land encumbered by non-commercial/non-residential buildings). The Commission would apply a 20 percent reduction to remove the value of irrigated farmland and buildings from the ''land and buildings'' category, but would avoid grouping the resulting land values into zones. Thus, under the BLM zone system, if the per-acre land value for County A, after the 20 percent reduction, is $3,500 and the zone range is $3,000 to $5,000, then County A's per-acre land value for purposes of the BLM formula would be $5,000. In contrast, under the proposed rule, the per-acre land value for County A would be $3,500, rather than $5,000.[43]

48. Using the county-by-county data is the ''best approximation'' of county values of which the Commission is aware. This method would result in more accurate land valuations for all licensees because under the zone system, every county is priced at the highest zone value (and thus the value of every county is inflated). In addition, the use of NASS Census data, which is updated every five years, alleviates commenters' concern that values are based on short-term anomalies in real estate prices.

49. Several commenters disagree with the use of an agricultural index as the basis for per-acre land values, arguing that the Commission has previously rejected use of an agricultural-based index in Order No. 469.[44] In Order No. 469, the Commission determined that the BLM fee schedule, which was based on a survey of lands that had been occupied by BLM and Forest Service linear rights of way, was the best approximation of per-acre rental rates for linear rights of way. The Commission rejected use of the agricultural index produced by the USDA at that time because the index overvalued the types of lands that are used for hydropower purposes, provided values only for states and not by county, and required too many adjustments by the Commission to account for farm buildings, cleared and arable land, and the private ownership of the lands.[45] The Commission concluded that the administrative efficiencies provided by the 1987 BLM fee schedule were superior to the many adjustments the Commission would have had to make to the USDA's agricultural index.

50. This is no longer the case. BLM has adopted use of the NASS Census for determining per-acre land values by county and has incorporated reasonable adjustments to the raw NASS Census data to more accurately value the types of lands used as Federal rights of way. Unlike the previous agricultural index created by USDA, the NASS Census includes land values at the county level, allowing differentiation within each state.

51. In addition, BLM's methodology for producing the fee schedule provides for significant adjustments to the NASS Census land values to account for the same concerns the Commission had when considering use of the USDA agricultural index. BLM uses the total average ''land and buildings'' category from the NASS Census, which includes, irrigated and non-irrigated croplands

[42] There is an 18 month delay in NASS's publication of the census data. In BLM's administration of its formula it provides another 18 month delay to allow notice of any changes in applicable county values.

[43] After the other components of the BLM formula are applied (encumbrance factor reduction, rate of return, and adjustment for inflation), County A's per-acre rent in 2011 under the Commission's proposed rule would be approximately $94.

[44] FERC Stats. & Regs. ¶ 30,741 at 30,589.

[45] *Id.*

(but not the value of crops), pasturelands, rangelands, woodlands, and interstitial lands, such as roads, ponds, wastelands, and lands encumbered by non-commercial or non-residential buildings. In consultation with NASS officials, BLM determined that a 20 percent reduction to the average per-acre ''land and buildings'' category would remove the value of irrigated croplands and lands encumbered by buildings, which are generally not the types of lands used for linear rights of way or hydropower projects. Because the Commission proposes to adopt the BLM fee schedule, the Commission would not be required to make these adjustments itself. Therefore, the NASS Census data and BLM's application of this data alleviates the concerns the Commission once had with USDA's previous agricultural index.

52. Several commenters object to use of the BLM fee schedule because recent NASS Census data was gathered during a national real estate bubble. The Commission recognizes that property values have increased significantly in some parts of the country in the last decade. One of the significant advantages to the new BLM methodology is that the land values will be updated every five years. Because there is a delay in BLM's adoption of the NASS Census data, there will also be a delay in including these values into the fee schedule. However, over time, all increases and decreases in land values will be reflected in the NASS Census data and in the fee schedule.

53. Several commenters believe that licensees should have the opportunity, at their own expense, to submit individual appraisals to demonstrate the NASS Census per-acre land values are inaccurate. The Commission continues to believe that individual land appraisals would be difficult to administer, would increase the costs of administering Part I of the FPA, and would increase the potential for disputes and litigation over annual charges.

54. Commenters argue that the Commission should allow individual appraisals because BLM allows for such an opportunity. This is not accurate. The BLM rule makes clear that all entities with linear rights of way are to be assessed a rental rate according to the published fee schedule. The BLM rule allows appraisals to be submitted where an entity is making a one-time rental payment for a perpetual right of way or easement on land that will be transferred out of Federal ownership. If Federal lands within a licensee's project boundary were transferred out of Federal ownership, then the Commission would no longer collect annual charges for the use of those Federal lands from that licensee.[46]

55. The Commission recognizes that for some licensees regional land values have increased dramatically, resulting in a significant increase in the rental rate for the use of Federal lands by hydropower licensees. This is primarily the result of a shift from a methodology that used land values from 1987 to a methodology that uses current market land values. Because the 2008 BLM methodology incorporates five year updates to the per-acre county land values, it is not anticipated that such a large increase in annual charges for the use of Federal lands will occur again.

*B. Encumbrance Factor*

56. The encumbrance factor is a measure of the degree that a particular type of facility encumbers the right-of-way area or excludes other types of land uses.[47] If the encumbrance factor is 100 percent, the right-of-way facility (and its operation) is encumbering the right-of-way area to the exclusion of all other uses. Impacts could include visual, open space, wildlife, vegetative, cultural, recreation, and other public land resources. The updated BLM methodology reduces the encumbrance factor from 70 percent to 50 percent.

57. Several commenters believe that the encumbrance factor should be less than 50 percent, particularly because other uses are often authorized on the Federal lands. In promulgating the 2008 fee schedule, BLM revisited its survey of the degrees of encumbrance presumed by utility facilities and infrastructure, and determined that 50 percent was more reasonable than 70 percent because lands often can be used for other purposes. BLM made this change as a result of comments received on its proposed rule, a review of industry practices in the private sector, and a review of the Department of Interior's appraisal methodology for right-of-way facilities located on Federal lands.[48] However, BLM explained that the degree to which Federal lands can be used for multiple purposes does not reduce the rental rate to be assessed, and clarified that grants issued for rights-of-way facilities are non-exclusive, such that BLM reserves the right to authorize other uses within a right-of-way area.[49]

58. Several commenters suggested the public benefits provided by hydropower licensees should result in a reduced encumbrance factor.[50] However, the public benefits required by a license cannot completely offset the rental fee for use of Federal lands. Rather, the public benefits, including aesthetics, recreation, environmental, fish and wildlife, and others, are required by the FPA in order to receive a license, not in exchange for occupying Federal lands. We acknowledge these public uses at many projects by discontinuing the practice of doubling the charges for non-transmission line lands. However, because hydropower projects located on Federal lands do indeed make use of public property for which the FPA requires us to set a reasonable fee, we agree with BLM's use of a 50 percent encumbrance factor.

59. The Commission's practice has been to charge the fee schedule rental rate for transmission line lands and to double this rate for other project areas based on the theory that linear rights of way represent a lesser encumbrance than do rights of way over other project areas. Most commenters request that the Commission discontinue this practice. The 1987 fee schedule was developed for *linear* rights of way on Federal lands, which was based on a survey of market values for the various types of land that the Forest Service and BLM had allowed to be occupied by *linear* rights of way. When the Commission adopted BLM's 1987 fee schedule, it recognized that the values identified in the BLM schedule were the ''best approximation'' available of the value of lands used for transmission linear rights of way. Thus, it was reasonable at that time for the Commission to assess transmission line lands at this rate, but to double the rate for non-linear project areas that involved a more comprehensive occupation of Federal lands than a linear right of way. However, because the NASS Census provides a per-acre value for lands generally, and not specifically for linear sections of land, there is no compelling reason to double the underlying value represented in the NASS Census for non-linear lands. Therefore, we agree with commenters and propose to discontinue this practice.

[46] Annual charges for the use of Federal lands would still be assessed if the lands transferred out of federal ownership were subject to a power site classification under section 24 of the FPA. 16 U.S.C. 818 (2006).

[47] 73 FR 65040 at 65047.

[48] *Id.*

[49] *Id.*

[50] Idaho Power believes the encumbrance factor should be zero, which would zero out the rental rate as well.

*C. Rate of Return*

60. The BLM fee schedule adopts a fixed rate of return of 5.27 percent, which is the most current 10-year average (1998–2008) of the 30-year and 20-year Treasury bond yield rate. This is a reduction from the rate of return of 6.41 percent under the 1987 fee schedule, which was the 1-year Treasury Securities ''Constant Maturity'' rate from June 30, 1986. The rate of return component used in the fee schedule formula reflects the relationship of income to property value, as modified by any adjustments to property value. BLM reviewed a number of appraisal reports that indicated the rate of return for land can vary from seven to twelve percent and is typically around ten percent. These rates take into account certain risk considerations, and BLM chose to use a ''safe rate of return,'' such as the prevailing rate on insured savings accounts or guaranteed government securities. In its 2008 rule, BLM explained that a 10-year average is more appropriate than a rate selected from one point in time, and that a periodic adjustment of the rate of return would lead to uncertainty in rental fees, which would have a negative impact on utilities and customers and duplicate the changes reflected in the GDP index.

61. SCE commented that the Commission should use the 30-year Treasury bond rate rather than the 10-year average of the 30-year Treasury bond yield rate because use of the actual 30-year rate is the most accurate valuation of a long-range asset. While using the actual 30-year rate would be more accurate, we agree with BLM's rationale that an annual adjustment of the rate of return would result in unnecessary uncertainty with respect to rental rates. Therefore, the Commission finds that BLM's use of the 5.27 percent fixed rate of return is reasonable.

*D. Annual Adjustment Factor*

62. The BLM fee schedule includes an annual adjustment factor, which is currently 1.9 percent. The annual adjustment factor allows the rental rate to stay current with inflationary or deflationary trends. In its 2008 rule, BLM explained that it will adjust the per-acre rent each calendar year based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year that the NASS Census data becomes available. Thus, the IPD–GDP will change every ten years. The annual adjustment factor is based on the average annual change in the IPD–GDP for the 10-year period immediately preceding the year (2004) that the 2002 NASS Census data became available. This figure is 1.9 percent and will be applied for each calendar year through 2015.

63. BLM will recalculate the annual index adjustment in 2014 based on the average annual change in the IPD–GDP from 2004 to 2013 (the 10-year period immediately preceding the year (2014) when the 2012 NASS Census data will become available) and will apply it annually to the fee schedule for years 2016 through 2025. The Commission proposes to adopt BLM's decadal updates to the annual index adjustment.

**IV. Regulatory Requirements**

*A. Information Collection Statement*

64. The Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[51] The proposed regulations discussed above do not impose or alter existing reporting or recordkeeping requirements on applicable entities as defined by the Paperwork Reduction Act.[52] As a result, the Commission is not submitting this proposed rule to OMB for review and approval.

*B. Environmental Analysis*

65. 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.[53] Commission actions concerning annual charges are categorically exempted from the preparation of an Environmental Assessment or an Environmental Impact Statement.[54]

*C. Regulatory Flexibility Act*

66. The Regulatory Flexibility Act of 1980 (RFA)[55] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[56] The SBA has established a size standard for hydroelectric generators, 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 12 months did not exceed four million megawatt hours.[57]

67. Section 10(e)(1) of the FPA requires that the Commission fix a reasonable annual charge for the use, occupancy, and enjoyment of Federal lands by hydropower licensees.[58] The Commission has issued 253 licenses that occupy Federal lands to 135 discrete licensees, who will be impacted by the proposed rule. The proposed rule adopts a methodology promulgated by BLM, based on the NASS Census data, to determine the annual charge for the use of Federal lands. The methodology for assessing this annual charge under the existing rule is based on land values from 1987, whereas the proposed rule incorporates current land values, and would update those values every five years. As a result, some of the 135 licensees may experience a one-time increase in their annual charge for the use of Federal lands.

68. Nevertheless, based on a review of the 135 licensees with Federal lands that will be impacted by the proposed rule, we estimate that less than ten percent are small entities under the SBA definition. The 135 licensees represent utilities, cities, and private and public companies in 30 states or territories. Many of the utilities which may seem to be under the four million megawatt hours per year threshold are also engaged in electricity production through other forms of generation, such as coal or natural gas, or also provide other utility services such as natural gas or water delivery. Similarly, many licensees that are small hydropower generators are affiliated with a larger entity or entities in other industries. Therefore, we estimate that less than ten percent of the impacted licensees are actually small, unaffiliated entities who are primarily engaged in hydropower generation and whose total electrical output through transmission, generation, or distribution is less than four million megawatt hours per year.

69. Any impact on these small entities would not be significant. Under the proposed rule there may be a one-time increase for some licensees in the annual charge for the use of Federal lands, but because the new methodology for calculating the annual charge will be updated every five years, any future

[51] 5 CFR 1320.11 (2011).

[52] 44 U.S.C. 3502(2)–(3) (2006).

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

[54] 18 CFR 380.4(a)(11) (2011).

[55] 5 U.S.C. 601–612 (2006).

[56] 13 CFR 121.101 (2011).

[57] 13 CFR 121.201, Sector 22, Utilities & n.1 (2011).

[58] 16 U.S.C. 803(e)(1) (2006).

increases or decreases will be incremental. In addition, small, unaffiliated entities generally occupy less Federal lands than larger projects that generate more power. Therefore, as a class of licensees, small entities would be less impacted by an annual charge for the use of Federal lands. Furthermore, this proposed rule does not incur any additional compliance or recordkeeping costs on any licensees occupying Federal lands. Consequently, the proposed rule should not impose a significant economic impact on small entities.

70. Based on this understanding, the Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

*D. Comment Procedures*

71. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due January 6, 2012. Comments must refer to Docket No. RM11–6–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

72. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

73. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

74. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

*E. Document Availability*

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

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

77. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–(866) 208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

**List of Subjects in 18 CFR Part 11**

Dams, Electric power, Indians-lands, Public lands, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Spitzer is not participating.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission proposes to amend Part 11, Chapter I, Title 18, *Code of Federal Regulations,* as follows:

## PART 11—ANNUAL CHARGES UNDER PART I OF THE FEDERAL POWER ACT

1. The authority citation for part 11 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

**§ 11.2 [Amended]**

2. Amend § 11.2 by deleting paragraph (a).

3. Amend § 11.2 by revising paragraph (b) to read as follows:

(b) Pending further order of the Commission, annual charges for the use of government lands will be payable in advance, and will be set on the basis of an annual schedule of rental fees for linear rights-of-way as set out in Appendix A of this part. Annual charges for transmission line rights of way and other project lands will be equal to the per-acre charges established by the above schedule. The Commission, by its designee the Executive Director, will update its fee schedule to reflect changes in land values established by the U.S. National Agricultural Statistics Service Census, and to reflect changes in the annual adjustment factor, as calculated by the U.S. Bureau of Land Management. The Executive Director will publish the updated fee schedule in the **Federal Register**.

4. Amend § 11.2 by deleting existing paragraphs (c)(1) and (c)(2).

5. Amend § 11.2 by redesignating paragraph (b) as new paragraph (a), and by redesignating paragraphs (d) and (e) as new paragraphs (b) and (c), respectively.

[FR Doc. 2011–30110 Filed 11–21–11; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2011–0875; FRL–9495–1]**

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern particulate matter (PM) emissions from paved and unpaved roads and livestock operations and aggregate and related operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATE:** Any comments must arrive by December 22, 2011.

**ADDRESSES:** Submit comments, identified by docket number EPA–R09–OAR–2011–0875, by one of the following methods:

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

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

*Instructions:* All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that

you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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## I. The State's Submittal

### *A. What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| SCAQMD | 1157 | PM10 Emission Reduction from Aggregate and Related Operations. | 09/06/2006 | 05/17/2010 |
| SCAQMD | 1186 | PM10 Emissions from Paved and Unpaved Roads and Livestock Operations. | 07/11/2008 | 12/23/2008 |

On June 8, 2010 and April 20, 2009, EPA determined that the submittals for SCAQMD Rule 1157 and Rule 1186, respectively, met the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

### *B. Are there other versions of these rules?*

There is no previous version of Rule 1157 in the SIP, although the SCAQMD adopted an earlier version of this rule on January 7, 2005 which was not submitted to us. Rule 1157 was amended on September 6, 2006, and CARB submitted it to us on May 17, 2010. We approved an earlier version of Rule 1186 into the SIP on November 14, 2005 (70 FR 69081). The SCAQMD adopted a revision to the SIP-approved version on July 11, 2008 and CARB submitted it to us on December 23, 2008.

### *C. What is the purpose of the submitted rule and rule revision?*

PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control PM emissions. Rule 1157 reduces fugitive dust PM10 emissions from aggregate and related operations including loading and unloading activities, process equipment, open storage piles, unpaved and paved roads inside the facilities, and track out. Amended Rule 1186 controls PM from paved and unpaved public roads, and livestock operations. The rule was amended to require submission of data to demonstrate that the street sweeper performance has not been affected by requirements in the SIP-approved rule; and also to establish a process by which aftermarket parts suppliers may qualify to sell replacement parts while maintaining the original equipment certification. EPA's technical support documents (TSDs) have more information about these rules.

## II. EPA's Evaluation and Action

### *A. How is EPA evaluating the rules?*

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The SCAQMD regulates a PM nonattainment area classified as serious (see 40 CFR part 81), so Rules 1157 and 1186 must fulfill BACM.

Guidance and policy documents that we use to evaluate enforceability and RACM or BACM requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the

Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).

5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
6. ''Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,'' EPA 450/2–92–004, September 1992.

*B. Do the rules meet the evaluation criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, BACM, and SIP relaxations. The TSDs have more information on our evaluation.

*C. Public Comment and Final Action*

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

**III. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

**List of Subjects in 40 CFR Part 52**

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

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

Dated: November 4, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

[FR Doc. 2011–30156 Filed 11–21–11; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[MB Docket Nos. 00–168; 00–44; FCC 11–162]**

## Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations; Extension of the Filing Requirement for Children's Television Programming Report (FCC Form 398)

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on a proposed requirement that each television station's public inspection file be made available in an online public file to be hosted on the Commission's Web site.

**DATES:** Comments for this proceeding are due on or before December 22, 2011; reply comments are due on or before January 6, 2012. Written PRA comments on the proposed information collection requirements contained herein must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before January 23, 2012.

**ADDRESSES:** You may submit comments, identified by MB Docket Nos. 00–168 and 00–44, by any of the following methods:

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

*Federal Communications Commission's Electronic Comment Filing System (ECFS) Web Site: http://fjallfoss.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

*Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

*People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, *etc.*) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act proposed information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167. For detailed instructions for submitting comments and additional information on the rulemaking process, see the supplementary information section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Holly Saurer, *Holly.Saurer@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120. For additional information concerning the Paperwork Reduction Act information collection requirements

contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking, FCC 11–162, adopted and released on October 27, 2011. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/*. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

This document contains proposed information collection requirements. As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collections. Public and agency comments are due January 23, 2012.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

To view or obtain a copy of this information collection request (ICR) submitted to OMB: (1) Go to this OMB/GSA Web page: *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR as show in the Supplementary Information section below (or its title if there is no OMB control number) and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

*OMB Control Number:* 3060–0214.

*Title:* Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 76.1701 and 73.1943, Political Files.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Parties:* Business or other for-profit entities; Not for-profit institutions; Individuals or households.

*Number of Respondents and Responses:* 25,422 respondents; 59,833 responses.

*Estimated Time per Response:* 1 hour to 104 hours.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303, 307 and 308.

*Total Annual Burden:* 2,158,909 hours.

*Total Annual Costs:* $801,150.00.

*Privacy Act Impact Assessment:* The PIA is in progress.

*Nature and Extent of Confidentiality:* Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Needs and Uses:* The Commission is seeking approval for this proposed information collection from the Office of Management and Budget (OMB). On October 27, 2011, the Commission released a Notice of Proposed Rulemaking, MB Docket Nos. 00–168 and 00–44; FCC 11–162. This rulemaking proposed information collection requirements that support the Commission's public file rules that are codified at 47 CFR 73.3526 and 73.3527. 47 CFR 73.3526 and 73.3527 require that licensees and permittees of commercial and noncommercial AM, FM and TV stations maintain a file for public inspection at its main studio or at another accessible location in its community of license. The contents of the file vary according to type of service and status. The contents include, but are not limited to, copies of certain applications tendered for filing, a statement concerning petitions to deny filed against such applications, copies of ownership reports, statements certifying compliance with filing announcements in connection with renewal applications, a list of donors supporting specific programs, and a list of community issues addressed by the station's programming.

These rules also specify the length of time, which varies by document type, that each record must be retained in the public file. The public and FCC use the data to evaluate information about the licensee's performance and to ensure that station is addressing issues concerning the community to which it is licensed to serve.

*The proposed information collection requirements consist of:* Pursuant to proposed 47 CFR 73.1943(d), television station licensees or applicants must place all of the contents of its political file on the Commission's Web site.

Pursuant to proposed 47 CFR 73.3526(b), commercial television station licensees or applicants must place the contents of their public inspection file as required by 47 CFR 73.3526(e) on the Commission's Web site, with the exception of letters and emails from the public as required by 47 CFR 73.3526(e)(9), which will be retained at the station. A station must also link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site. The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; the public and broadcasting; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

Pursuant to proposed 47 CFR 73.3526(e)(18), commercial television stations must include in their public file

a copy of every agreement or contract involving sharing agreements for the station, including local news sharing agreements and shared services agreements, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate.

Pursuant to proposed 47 CFR 73.3526(e)(19), commercial television stations must include in their public file a list of all sponsorship identifications that must be announced on-air pursuant to 47 CFR 73.1212.

Pursuant to proposed 47 CFR 73.3527(b) non-commercial educational television station licensees or applicants must place the contents of their public inspection file as required by 47 CFR 73.3527(e) on the Commission's Web site, with the exception of letters and emails from the public as required by 47 CFR 73.3527(e)(9), which will be retained at the station. A station must also link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site. The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and the public and broadcasting. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

*OMB Control Number:* 3060–0174.

*Title:* Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Parties:* Business or other for profit entities; Individuals or households.

*Number of Respondents and Responses:* 22,761 respondents and 1,831,610 responses.

*Estimated Time per Response:* .0011 to .2011 hours.

*Frequency of Response:* Recordkeeping requirement; Third party disclosure; On occasion reporting requirement.

*Total Annual Burden:* 242,633 hours.

*Total Annual Cost:* $33,828.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

*Nature and Extent of Confidentiality:* Respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

*Privacy Impact Assessment(s):* The PIA is in progress.

*Needs and Uses:* The Commission is seeking approval for this proposed information collection from the Office of Management and Budget (OMB). On October 27, 2011, the Commission released a Notice of Proposed Rulemaking, MB Docket Nos. 00–168 and 00–44; FCC 11–162. This rulemaking proposed information collection requirements that will change the availability of record disclosures under 47 CFR 73.1212. 47 CFR 73.1212(e) states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, *etc.,* of the organization paying for such matter in its public file.

*The proposed information collection requirements consist of:* Pursuant to the changes proposed 47 CFR 73.1212(e) and 47 CFR 73.3526(e)(19), this list, which could contain personally identifiable information, would be located in a public file to be located on the Commission's Web site instead of being maintained in the public file at the station. Burden estimates for this change are included in OMB Control Number 3060–0214.

*OMB Control Number:* 3060–0466.

*Title:* Sections 73.1201, 74.783 and 74.1283, Station Identification.

*Form Number:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents/Affected Parties:* Business or other for-profit entities; Not for-profit institutions.

*Number of Respondents and Responses:* 24,158 respondents; 24,158 responses.

*Estimated Time per Response:* 0.166–1 hour.

*Frequency of Response:* On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

*Obligation To Respond:* Required to obtain or maintain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 152, 154(i), 303, 307 and 308.

*Total Annual Burden:* 23,324 hours.

*Total Annual Costs:* None.

*Nature and Extent of Confidentiality:* No need for confidentiality required with this collection of information.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* The Commission is seeking approval for this proposed information collection from the Office of Management and Budget (OMB). On October 27, 2011, the Commission released a Notice of Proposed Rulemaking, MB Docket Nos. 00–168 and 00–44; FCC 11–162. This rulemaking proposed information collection requirements that support the Commission's station identification announcements that are codified at 47 CFR 73.1201. 47 CFR 73.1201(a) requires television broadcast licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

*The proposed information collection requirements consist of:* Pursuant to proposed 47 CFR 73.1201(b)(3), three times a week, the station identification for television stations must include a notice stating that the station's public file is available for viewing at the FCC's Web site. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

The Commission is seeking OMB approval for the proposed information collection requirements.

## Summary of the Notice of Proposed Rulemaking

### I. Introduction

1. In this *Further Notice of Proposed Rulemaking* we take steps to modernize the way television broadcasters inform the public about how they are serving their communities. We seek comment on the proposals set forth below. Our goals in this proceeding are to make information concerning broadcast service more accessible to the public by taking advantage of current technology, thereby improving dialogue between broadcast stations and the communities they serve, and if possible reduce the compliance burdens on broadcasters. This item also seeks to further the goal of modernizing the Commission's processes and expeditiously transitioning from paper to digital technology in order to create efficiencies and reduce costs both for government and the private sector.

2. Specifically, we propose to largely replace the decades-old requirement that commercial and noncommercial television stations maintain a paper public file at their main studios with a requirement to submit documents for

inclusion in an online public file to be hosted by the Commission. We seek comment on ways to streamline the information required to be kept in the file, such as by excluding letters and emails from the public. We also propose that we should require that sponsorship identification, now disclosed only on-air, also be disclosed in the online public file, and propose to require disclosure online of shared services agreements. We seek comment on what steps we can implement in the future to make the online public file standardized and database compatible, further improving the usefulness of the data. The new proposals that the Commission host the online public file and that the online file largely replace the paper file at the main studio will meet the longstanding goals of this proceeding, to improve public access to information about how broadcasters are serving their communities, while at the same time significantly reducing compliance burdens on the stations. We propose to limit these reforms to television licensees at this time given that this proceeding has always been limited to television broadcasters. We will consider at a later date whether to apply similar reforms to radio licensees.

## II. Background

3. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation, but they must maintain a public inspection file, which gives the public access to information about the station's operations and enables members of the public to engage in an active dialogue with broadcast licensees regarding broadcast service. Among other things, the public inspection file must contain an issues/programs list, which describes the ''programs that have provided the station's most significant treatment of community issues during the preceding three month period.'' [1] The original *Notice of Proposed Rulemaking* in this proceeding grew out of a prior *Notice of Inquiry,* which explored the public interest obligations of broadcast television stations as they transitioned to digital.[2] In the 2000 *NPRM,* the Commission concluded that ''making information regarding how a television broadcast station serves the public interest easier to understand and more accessible will not only promote discussion between the licensee and its community, but will lessen the need for government involvement in ensuring that a station is meeting its public interest obligation.'' The Commission tentatively concluded to require television stations to use a standardized form to report on how they serve the public interest. The Commission also tentatively concluded to require television licensees to make the contents of their public inspection files, including the standardized form, available on their stations' Internet Web sites or, alternatively, on the Web site of their state broadcasters association. In 2007, the Commission adopted a *Report and Order* implementing these proposals.[3]

4. Following the release of the *Report and Order,* the Commission received petitions for reconsideration from several industry petitioners and public interest advocates. The industry petitioners raised a number of issues regarding the standardized form and the online posting requirement, generally contending that the requirements were overly complex and burdensome. Public interest advocates argued that the political file [4] should be included in the online public file requirement rather than exempted as provided in the *Report and Order,* and that the standardized form should be designed to facilitate the downloading and aggregation of data for researchers. In addition, five parties appealed the *Report and Order,* and the cases were consolidated in the United States Court of Appeals for the DC Circuit. The DC Circuit granted a petition to hold the proceeding in abeyance while we review the petitions for reconsideration. Challenging the rules in a third forum, several parties opposed the information collection contained in the *Report and Order* at the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act. Because of the multiple petitions for reconsideration, the Commission has not transmitted the information collection to OMB for its approval, and therefore the rules adopted in the *Report and Order* have never gone into effect.[5]

5. In June 2011, a working group including Commission staff, scholars and consultants released ''The Information Needs of Communities'' (''*INC Report*''), a comprehensive report on the current state of the media landscape.[6] The *INC Report* discussed both the need to empower citizens to ensure that broadcasters serve their communities in exchange for the use of public spectrum, and also the need to remove unnecessary burdens on broadcasters who aim to serve their communities. The *INC Report* provided several recommendations relevant to this proceeding, including eliminating unnecessary paperwork and moving toward an online system for public disclosures in order to ensure greater public access. The *INC Report* also recommended requiring that when broadcasters allow advertisers to dictate content, they disclose the ''pay-for-play'' arrangements online as well as on the air in order to create a permanent, searchable record of these arrangements and afford easy access by consumers, competitors and watchdog groups to this information. The Report also suggested that governments at all levels collect and publish data in forms that make it easy for citizens, entrepreneurs, software developers, and reporters to access and analyze information in order to enable mechanisms that can present the data in more useful formats, and noted that greater transparency by government and media companies can help reduce the cost of reporting, empower consumers, and foster innovation.

6. In the *Order on Reconsideration,* we conclude, in light of the reconsideration petitions we received with respect to the *Report and Order* and the comments and replies thereto, that the best course of action is to vacate the rules adopted in the *Report and Order* and develop a new record upon which we can evaluate our public file and standardized form requirements. In this *FNPRM* we seek comment on some of the proposals the parties put forth on reconsideration and other ideas as well to improve public access to information about how broadcasters are serving their

[1] 47 CFR 73.3526(e)(12).

[2] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Notice of Proposed Rulemaking, 65 FR 62683 (2000) (''*NPRM*''); *In the Matter of Public Interest Obligations of TV Broadcast Licensees,* Notice of Inquiry, 65 FR 4211 (1999)(''*NOI*'').

[3] *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Report and Order, 73 FR 13452 (2007) (''*Report and Order*''); *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* Erratum, 73 FR 30316 (2007).

[4] Sections 73.3526(e)(6), 73.3527(e)(5) and 73.1943 of the Commission's rules require that stations keep as part of the public inspection files a ''political file.''

[5] *See also* 47 CFR 73.3526, effective date nt. 2; 47 CFR 73.3526, effective date note; 47 CFR 73.1201, effective date note 2.

[6] ''The Information Needs of Communities: The Changing Media Landscape in a Broadband Age,'' by Steven Waldman and the Working Group on Information Needs of Communities (June 2011), available at *http://www.fcc.gov/infoneedsreport.* As noted in the INC Report, the views of the report ''do not necessarily represent the views of the Federal Communications Commission, its Commissioners or any individual Bureaus or Offices.'' *Id.* at 362.

communities while minimizing the burdens placed upon broadcasters. We also invite commenters to suggest any other changes that would promote these goals and modernize the provision of data to the public. We note that we are only addressing the online public file requirement in this *FNPRM.* Due to the complexity of the issues surrounding the replacement of the issues/programs list with a standardized form, we intend to promptly issue a separate Notice of Inquiry in a new docket seeking comment on the standardized form. We ask commenters to limit the comments filed in this docket to those related to the online posting requirement.

## III. Further Notice of Proposed Rulemaking

7. In this *FNPRM,* we seek input on how to create a modernized online public file requirement that increases public accessibility while taking into account and reducing where possible the burdens placed on broadcasters. First, we propose to largely replace the paper public file requirement with an online public file to be hosted by the Commission. We then seek comment on ways to streamline the information required to be kept in the file, and whether new items, such as sponsorship identifications and shared services agreements, should be disclosed online. We also seek comment on what steps we can implement in the future to make the online public file standardized and database compatible.

### *A. Placing the Public File Online*

8. The Commission first adopted a public inspection file rule more than 40 years ago. The public file requirement grew out of Congress' 1960 amendment of sections 309 and 311 of the Communications Act of 1934 (the ''Act'').[7] Finding that Congress, in enacting these provisions, was guarding ''the right of the general public to be informed, not merely the rights of those who have special interests,'' [8] the Commission adopted the public inspection file requirement to ''make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in dialogue with broadcast licensees.'' [9]

9. A station's public file is currently composed of both items that have to be filed with the Commission and items that are only available in the public file at the station. The items that have to be filed with the Commission or are otherwise available on the Commission's Web site, and their retention periods, are:

- FCC Authorizations (as required by 73.3526(e)(1), 73.3527(e)(1)) (retain until replaced);
- Applications and related materials (as required by 73.3526(e)(2), 73.3527(e)(2)) (retain until final action taken on the application); [10]
- Contour Maps (as required by 73.3526(e)(4), 73.3527(e)(3)) (retain as long as they reflect current, accurate information regarding the station);
- Ownership reports and related materials (as required by 73.3526(e)(5), 73.3527(e)(4)) (retain until a new, complete ownership report is filed with the FCC); [11]
- Portions of the Equal Employment Opportunity file (as required by 73.3526(e)(7), 73.3527(e)(6)) (retain until final action taken on the station's next license renewal application);
- The Public and Broadcasting manual (as required by 73.3526(e)(8), 73.3527(e)(7)) (retain most recent version indefinitely);
- Children's television programming reports (Form 398) (as required by 73.3526(e)(11)(iii)) (retain until final action taken on the station's next license renewal application);
- DTV transition education reports (Form 388) (as required by 73.3526(e)(11)(iv), 73.3527(e)(13)) (retain one year after last filed).[12]

The following items are only available at the station:

- Citizen agreements (as required by 73.3526(e)(3)) (retain for term of agreement);
- Political file (as required by 73.3526(e)(6), 73.3527(e)(5)) (retain for two years);
- Portions of the Equal Employment Opportunity file (as required by 73.3526(e)(7), 73.3527(e)(6)) (retain until final action taken on the station's next license renewal application);
- Letters and emails from the public (as required by 73.3526(e)(9)) (retain three years from receipt);
- Material relating to FCC investigations and complaints (as required by 73.3526(e)(10), 73.3527(e)(11)) (retain until notified in writing that the material may be discarded);
- Issues/Programs lists (as required by 73.3526(e)(11)(i), 73.3527(e)(8)) (retain until notified in writing that the material may be discarded);
- Donor lists for non-commercial educational channels (''NCEs'') (as required by 73.3527(e)(9)) (retain for two years from the date of the broadcast of the specific program reported);
- Records concerning children's programming commercial limits (as required by 73.3526(e)(11)(ii)) (retain until final action taken on the station's next license renewal application);
- Local public notice certifications and announcements (as required by 73.3526(e)(13), 73.3527(e)(10)) (retain for as long as the application to which it refers); [13]
- Time brokerage agreements (as required by 73.3526(e)(14)) (retain for as long as contract or agreement in force);
- Must-carry or retransmission consent elections (for commercial stations) or must-carry requests (noncommercial stations) (as required by 73.3526(e)(15), 73.3527(e)(12)) (retain for duration of election or request period);
- Joint sales agreements (as required by 73.3526(e)(16)) (retain for as long as contract or agreement in force);
- Class A TV continuing eligibility documentation (as required by 73.3526(e)(17)) (retain indefinitely);
- A list of chief executive officers or members of the executive committee of an entity sponsoring or furnishing broadcast material concerning political matter or matter involving the discussion of controversial issues of public importance (as required by 73.1212(e)) [14] (retain for two years).

10. In the *Report and Order* the Commission required television stations that have Internet Web sites to place their public inspection files on their stations' Web sites and to make these files available to the public without charge. As an alternative, the Commission determined that stations could place their public inspection files

[7] 47 U.S.C. 309 and 311.

[8] *Report and Order in Docket No. 14864* at 1666.

[9] *Id.* at 1667.

[10] Applications for a new construction permit granted pursuant to a waiver showing and applications for assignment or transfer of license granted pursuant to a waiver showing must be retained for as long as the waiver is in effect. In addition, license renewal applications granted on a short-term basis must be retained until final action has been taken on the license renewal application filed immediately following the shortened license term. *See* 47 CFR 73.3526((e)(2), 73.3527(e)(2).

[11] *See also* 47 CFR 73.3613 (specifying the contracts, instruments and documents required to be filed with the FCC).

[12] Stations only need to retain these quarterly reports in their files for one year, and they must only be included through the quarter in which the station concludes its DTV transition education campaign. *See* 47 CFR 73.3526(e)(11)(iv), 73.3527(e)(13). While almost all full-power television stations successfully transitioned to digital technology in 2009 and no longer need to retain these files, a few of these stations are not yet operating at full power and continue to be required to include Form 388 in their files.

[13] See also 47 CFR 73.3580(h) (directing placement of certifications and announcements into the public file).

[14] This rule allows for the required list to be retained instead at the network headquarters where the broadcast is originated by the network.

on their state broadcasters association's (''SBA'') Web site, where permitted by the SBA to do so. Several petitioners opposed this requirement, finding it costly and overly burdensome.

11. We continue to believe that making all station public files available online is beneficial to the public, and necessary to provide meaningful access to the information in the 21st century. The evolution of the Internet and the spread of Internet access has made it easier to post material online, made it easier for consumers to read material online, and increased the public policy efficacy of disclosure requirements. As the Commission noted in the *Report and Order,* by making the file available through the Internet, we hope to facilitate access to the file information and foster increased public participation in the licensing process. The information provided in the public file is beneficial to consumers who wish to weigh in on a station's license renewal. We note that the Commission rarely denies license renewal applications due to the licensee's failure to meet its public interest programming obligation. Easy access to public file information will also assist the Commission, Congress, and researchers as they fashion public policy recommendations relating to broadcasting and other media issues. Therefore, we tentatively conclude that television broadcasters should be required to make most of the required documents in their public inspection files available online, in lieu of maintaining all of the documents in paper files or electronic format available at their main studios. Currently, the public has access to public inspection files only by visiting the main studio—which may not be convenient—during regular business hours. Making the information available online will provide 24-hour access from any location, without requiring a visit to the station, thereby greatly increasing public access to information on actions a station has taken to meet its public interest obligation. The Internet is an effective and cost-efficient method of maintaining contact with, and distributing information to, broadcast viewers. We understand the concerns that broadcasters have presented regarding the costs necessary to create and host an online public file. We believe that technological advances in the intervening years since this requirement was contemplated, along with changes to the proposed requirements that are discussed below, in particular the Commission's proposal to expend its resources and assume the burden of hosting of the public files, will mitigate broadcasters' concerns. Given the wide-spread availability of internet access and our goal of limiting costs for broadcasters, we also believe that continuing to require a complete paper public file is largely unnecessary and that the costs of such a duplicative requirement cannot be justified.

1. Commission Hosting of Online Public File

12. Several participants in this proceeding have expressed concern about the costs required for broadcasters to create and host their own online public file. A few reconsideration petitioners suggested that the Commission should instead host the public file on its Web site, arguing that such a solution would be less burdensome to licensees, and would also be more efficient, since many public file items are already filed with the Commission. For instance, the Named State Broadcasters Association argued in its petition for reconsideration that the costs of hosting online public files should be borne by the Commission instead of individual stations, estimating that this will save broadcasters over $24 million in first-year costs, and almost $14 million in annual costs thereafter.

13. We tentatively agree that the paper public file requirement should be largely eliminated, and replaced with an online public file requirement hosted on the Commission's Web site. We believe it will be more efficient for the public and less burdensome for broadcasters to have all or most of their public files available in a centralized location. Pursuant to this approach, a member of the public could enter a station's call sign and access an electronic version of the public file, making the Commission's Web site a one-stop shop for information about broadcast television stations. This would be easier for the public than searching for individual stations' Web sites, which would have been required under the *Report and Order.* Because more than a third of the required contents of the public file have to be filed with the Commission in our Consolidated DataBase System (''CDBS'') under current rules, we propose that we will import and update any information that must already be filed with the Commission electronically in CDBS to each station's public file, which will be part of a database of all television station public files on the Commission's Web site.[15] This will create efficiencies for broadcasters and centralize information for the public. Under this mechanism, broadcasters would be responsible for uploading only those items not otherwise filed with the Commission or available on the Commission's Web site. We expect that in order to upload information into its online public file, stations will need to log in, likely with their FCC Registration Numbers. We seek comment on this proposal.

14. We believe that requiring broadcasters to upload the required items to their online public files housed on the Commission Web site will not be unduly burdensome. With the exception of those categories discussed below, stations will be required to upload only those types of documents currently maintained in their public files and ensure that the online file contains all required information. Thus, for example, if a station does not have time brokerage agreements, joint sales agreements, or citizen agreements, there would be nothing in these categories for the station to upload, and the station would merely have to indicate that the category was not applicable. Stations that do have such agreements must only update them when the agreements change, or remove them when the agreements expire. Stations will also be expected to maintain their online public files actively, making sure they contain information as required by the public file rules and removing of items that are no longer required to be retained under our rules. Broadcasters have raised concerns about inclusion of some of the items listed above, such as the political file and letters and emails from the public. We seek comment on specific issues related to those items below.

15. We also propose that stations will need to retain electronic copies for back-up purposes of all of the public file items to prepare for the unlikely event that the Commission's online public file database were to become unavailable or disabled. We do not believe that these electronic copies should be made generally available as an alternative to the Commission-hosted online public file. Therefore, we propose that such electronic copies need only be available to the Commission, and not the public, unless the online public file becomes unavailable or disabled for any reason, in which case stations must make their

[15] A successful upload of a station's public file on the Commission's Web site would not be considered agency approval of the material contained in the filing. As with paper public files, the Commission staff would not review the material placed in each station's online public file for purposes of determining compliance with Commission rules on a routine basis. Thus, the purpose of online hosting would simply be to provide the public with ready access to the material.

copies available to the general public in whatever format they choose. Should copies of any items in the public file be more readily available? For instance, due to the short seven-day deadline to request equal opportunity appearances, and the importance of candidates having prompt access to the political file, particularly in the days leading up to an election, should additional steps be taken to ensure that access to the political file is maintained? Should we require that stations make the back-up political file information available to candidates, their representatives, and the public at their stations, in whatever format they prefer, at least in the short term as we gain experience with the files being hosted by the FCC? We note that whatever requirement we ultimately adopt, stations can continue to make the public file available locally if they choose to do so. We believe that once all public file documents are available electronically, it will not be burdensome to keep electronic copies at the station. We also consider it likely that broadcasters would retain electronic copies of such documents in the ordinary course of business. We seek comment on this proposal, including estimates of any burden imposed by this requirement. We also seek comment on how long such copies should be maintained. Should copies be retained for the same length of time that each item must be retained under our existing rules?

16. Two petitioners on reconsideration suggested that broadcasters should be permitted to limit online public file access to viewers within a station's geographic coverage area. We see no reason to limit online access to the public file, and seek comment on this tentative conclusion. As we noted in the *Report and Order,* we believe it entirely consistent with Congressional intent in adopting section 309 of the Act to embrace a public file requirement that enhances the ability of both those within *and* those beyond a station's service area to participate in the licensing process. Additionally, allowing access to people within and outside the station's service area creates no additional burden; indeed, limiting it to local residents would require taking additional steps to screen those seeking access to a particular file. In addition, limiting access to those in a geographic area would prevent local residents from accessing the information while they are temporarily outside the region.

17. *Transition.* A reconsideration petitioner proposed reducing the burden on licensees by limiting the online public file to material generated after any new rules become effective, thereby grandfathering all prior paper filings. We do not agree with this proposal. Pursuant to this approach, only items created after the adoption of the online public file requirement would be required to be uploaded, not items currently in the paper files. As previously stated, we believe that the one-time electronic scanning and uploading of existing documents, both from the current licensee and any prior licensee, would not be unduly burdensome and that adopting a grandfathering approach would be confusing to those seeking access to the information.[16] Those viewing an online public file might remain unaware of the existence of documents in the paper public file. Moreover, such an approach would necessitate the continued maintenance of a robust paper file, diminishing the benefits of the online file in terms of improved public access to information. We seek comment on this view.

18. *Accessibility.* In the *Report and Order,* the Commission determined that television licensees must make their Web site public files accessible to people with disabilities. Many Petitioners asked for clarification of this requirement. The *INC Report* noted that the recently passed Twenty-First Century Communications and Video Accessibility Act will help ensure that people with disabilities will have access to new media. The Public Interest Public Airwaves Coalition (''PIPAC'') has requested that the Commission require broadcasters to ensure that the portions of their Web sites that host the public file are accessible to people with disabilities. Because the Commission is proposing to host all online public files, we do not believe that such a requirement will be necessary for these purposes.[17] We intend to ensure that the online public files, like the rest of the Commission's Web site, are accessible to people with disabilities. Under section 508 of the Rehabilitation Act, federal agencies must ensure that members of the public who are disabled and who are seeking information or services from a Federal agency ''have access to and use of information and data that is comparable to the access to and use of the information and data by such members of the public who are not individuals with disabilities.'' [18] The Commission's Web site complies with this law. We invite comment on this matter.

2. Application of Online Posting Rule to Specific Public File Components

19. *Political File.* In the *Report and Order,* the Commission excluded the political file from the Web site posting requirement, determining that the burden of placing a station's political file online outweighed the benefit of posting this information, which is most heavily used by candidates and their representatives. In a petition for reconsideration of the *Report and Order,* CLC *et al.* asked the Commission to reconsider the exclusion, contending that the decision focused exclusively on the interests of the candidates and broadcasters and not the public, researchers, and public interest organizations that also need to access the files. In response, NAB argued that the Commission correctly determined to exempt stations' political files from the Web site posting requirement, as this approach is consistent with the Commission's prior exemption of political files from the requirement that stations make copies of documents in the public file available to persons that call the station. More recently, PIPAC has argued that placing political file information online will reduce the burden on broadcasters, who often receive multiple daily in-person requests to access this information during an election season.

20. We propose that the political file should not be exempted from the online public file requirement. We agree with CLC *et al.* that the public is entitled to ready access to these important files. Since exempting the political file in 2007, we have learned that the vast majority of television stations handle political advertising transactions electronically, through emails and a variety of software applications. As a result, requiring them to make this information publicly available online appears to impose far less of a burden than previously thought. We emphasize, however, that the online political file would serve as a source of information to candidates, buyers, viewers, and others, but that the actual purchase of

[16] We recognize that an implementation plan needs to be developed to enable all television stations to post their public file documents in an orderly manner, possibly with rolling implementation dates. The Bureau, on delegated authority, will develop an implementation schedule and provide any necessary guidance regarding implementation issues at the appropriate time.

[17] While we do not address any Web site accessibility requirements at this time, we encourage broadcasters to provide the information currently available on their Web site in an accessible manner, as well as provide information about accessible programming, such as that with video description, as part of their efforts to meet the public interest obligation. Station Web sites can be a primary source of information for consumers and providing information, particularly about accessible programming, in an accessible manner would be beneficial to viewers.

[18] *See* 29 U.S.C. 794d(1)(A)(ii).

advertising time and the receipt of equal time requests would continue to be handled by the station. We seek comment on these proposals and the relative burdens and benefits that broadcasters would face under this requirement. We also seek comment about the logistics of making this file available online. Our rules currently require that records should be placed in the political file ''as soon as possible'' and ''as soon as possible means immediately absent unusual circumstances.'' [19] We tentatively conclude that stations should similarly be required to upload the same records to their online political file ''immediately absent unusual circumstances.'' Immediacy is necessary with respect to the political file because a candidate has only seven days from the date of his opponent's appearance to request equal opportunities for that appearance. We also seek comment on methods and procedures that can be implemented to enable the near real-time upload of political file documents during periods of heightened activity. Can the Commission assist in making tools available to enable such immediate uploads and make such immediate filing as non-burdensome as possible?

21. Finally, we note that the public file rule requires licensees to keep ''a complete and orderly'' political file. Accordingly, we would expect licensees to upload any political file information to the online file in an organized manner so that the political file does not become difficult to navigate due to the sheer number of filings. For an online political file to be useful, candidates and members of the public must be able to easily find information that they seek. Should the Commission create federal, state, and local subfolders for each station's political file? Should we allow stations to create additional subfolders within the political file? For instance, should stations be able to create subdivisions within federal, state and local races, to reflect individual political races? We seek comment on any other methods of organization that would make the information more easily accessible, and also lessen the number of questions that broadcasters would have to field about the contents and organization of the political file.

22. *Letters From the Public.* A station must currently retain in its paper public file all letters and emails from the public regarding operation of the station unless the letter writer has requested that the letter not be made public or the licensee feels that it should be excluded due to the nature of its content, such as a defamatory or obscene letter. In the 2007 *Report and Order* the Commission determined that stations would not be required to post letters from the public on their online public files, due to the burden and cost. The Commission did, however, require that public comments sent by email to the station be placed in the station's online public file, as the costs of posting correspondence already in electronic form would be less burdensome on the station than uploading paper comments to electronic form. Several reconsideration petitioners asked that we also exempt email from the posting requirement, arguing that requiring their inclusion raises privacy concerns. They asserted that posting emails from children online may result in violations of the Children's Online Privacy Protection Act, which prohibits posting children's personally identifiable information online. These petitioners also argued that the Commission oversimplified the costs of such a requirement, since station personnel would need to review and redact all emails to strip them of personally identifiable information before posting them. The public interest community responded that privacy concerns could be ameliorated through the use of warnings to posters that their submissions would become part of the public file, and that an online form could be used that conceals personal information. More recently, PIPAC recommended that the Commission eliminate letters and email from the online public file requirement. They suggest that in order to alert members of the public to letters and emails, stations should instead be required to disclose the total number of letters available at the station and provide a notice that these materials are available for public viewing at the main studio consistent with existing paper public file rules.

23. We propose that letters and emails from the public should not be required to be placed online. We agree that the privacy and burden concerns discussed above are significant enough to merit their exclusion. Letters and emails from the public that are currently included in the public file, like the rest of the file's contents, are already publicly available. We recognize that making this information available online would make it much more readily accessible to the public, but such increased accessibility may not be expected by viewers who communicate with their stations and may actually make some viewers less inclined to write to their stations. We seek comment on whether the concerns discussed above justify our proposal to exempt such communications from the online disclosure requirement. Alternatively, should we allow or require stations to redact personally identifiable information before posting online? While we propose that the online public file should largely replace the paper public file, we seek comment on PIPAC's proposal to require broadcasters to continue to retain copies of such letters at the station for public viewing in a paper file or an electronic database at their main studios. We envision that such a requirement would be limited to correspondence, and would not require any other public file information be publicly available at the station. Would such a correspondence file requirement be limited enough in scope to justify any additional burdens? We also seek comment on PIPAC's proposal to require stations to report quarterly on how many letters they have received. What would be the benefits of requiring stations to count and report how many letters they have received? What would be the burdens of such a requirement? Should we consider requiring a brief description of the letter(s) received? We seek comment on these and any other suggestions or proposals that would make letters and emails from the public more easily accessible while at the same time addressing privacy concerns. We also seek comment on whether stations should have to retain comments left by the public on social media pages, like Facebook. Should those be considered ''written comments and suggestions received from the public regarding operation of the station''? We tentatively conclude that such information should not be required to be maintained in the correspondence file. We seek comment on this tentative conclusion. We also seek comment on whether any other contents of the public file raise similar privacy concerns, such as donor lists that NCEs must include in the public file, as required by 73.3527(e)(9).

24. *Contour maps.* Maps showing stations' service contours are available on the Commission's Web site, and are derived from information provided by stations in the CDBS. Stations are also required to include contour maps in their public files; unlike the ones available on the Commission's Web site, these include the station's service contours and/or main studio and transmitter location. In their petition for reconsideration of the *Report and Order,* the Joint Broadcasters asked whether the availability of contour maps on the Commission's Web site is sufficient. We believe that the contour maps available on the Commission's Web site are

[19] *See* 47 CFR 73.1943(c).

sufficient as they provide necessary information regarding a station's service contours, and seek comment on this issue. We discuss requiring information about a station's main studio in section 3 below.

25. *The Public and Broadcasting manual.* We propose to eliminate the requirement that stations make available ''The Public and Broadcasting'' manual in their public files. ''The Public and Broadcasting'' is a consumer manual that provides an overview of the Commission's regulation of broadcast radio and television licensees. This manual is already available on the Commission's Web site. As we look to centralize all public inspection files, we no longer believe it will be necessary for every station's electronic public file to contain this manual, nor will stations need to keep a copy at the station. Instead, we propose to make ''The Public and Broadcasting'' prominently available within the public file portion of the Commission's Web site once it is created. We seek comment on this proposal.

26. *Issues/programs lists.* All broadcasters must currently include in their public files issues/programs lists covering the current license term, which are a lists of programs that have provided the stations' most significant treatment of community issues during the preceding quarter. In the 2007 *Report and Order,* we noted the deficiencies of the issues/programs lists, and replaced the requirement with a standardized disclosure form, subject to final OMB approval, as discussed above. As noted above, we have vacated the 2007 *Report and Order.* Although the issues/programs list required under the current rules provides some information to the public and establishes a record of some of a station's community-oriented programming, we continue to believe that it suffers from several drawbacks and intend to promptly a Notice of Inquiry to seek further input on a new standardized form. We propose that broadcasters should be required to post to their online public file, on a quarterly basis, their issues/programs lists required under current rules, until the Commission replaces the issues/programs list with a new standardized form, which we seek to address in an expedited fashion. We seek comment on this proposal.

27. *FCC investigations and complaints.* Stations are required to maintain in their public file material relating to a Commission investigation or complaint. A petition for reconsideration of the *Report and Order* suggested excluding from a station's online public file any material that is the subject of an indecency investigation or complaint. The petitioner argued that posting materials related to an indecency investigation online would be inappropriate, since it is inconsistent with the purpose of the Commission's indecency regime, which is to protect children. They argued that because children have easy access to an online public file, but not to a station's paper public file, any material related to indecency investigations should be available in a station's paper public file only. We think it is important that material relating to indecency investigations not be excluded from the online public file, given its relevance to the renewal process. We do not believe that making this information available in the public file portion of the Web site will increase the risk to children, since the Commission already posts materials related to indecency investigations on its Web site. We seek comment on this proposal. We also seek comment on whether the FCC should post published sanctions, including forfeiture orders, notices of violation, notices of apparent liability, and citations, in a station's online public file. If so, should licensees be required to upload their responses, if any, to these FCC actions? We believe that this is the sort of information that the public would want to find in reviewing a licensee's public file, and is a natural extension of the requirement to retain FCC correspondence. We note that parties could seek confidential treatment of particular information in the filings, if necessary.

3. Potential Items To Be Added to the Online Public File Requirement

28. The *INC Report* noted the importance of making online disclosure a pillar of media policy and the public's need to have a more granular understanding of how broadcasters use their stations and serve the public. Given that we seek to modernize public disclosure requirements, we also seek comment on adding main studio information, sponsorship identification information, and any sharing agreements to a station's online public file. While we seek to avoid unduly burdening broadcasters, we do not believe that this modest expansion of the public file will be burdensome and we believe that this information will be useful to the public.

29. *Main Studio Information.* As discussed above, stations are currently required to include contour maps in their public files, which must include the station's service contours and/or main studio and transmitter location. The contour maps available on the Commission's Web site, which we propose today to fulfill the online public file requirement, does not include main station information. Further, the Commission does not require the reporting of a station's main studio. We believe this information will help members of the public to engage in an active dialogue with broadcast licensees regarding its service, which is one of the goals of this proceeding, and will also assist in the identification of broadcasters that are engaging in shared services arrangements. We therefore propose that in the Commission-maintained online public file, the station's main studio address and telephone number be displayed. For stations with a main studio waiver, we propose that the location of the local file and the required toll free number should be listed. We seek comment on this proposal, as well as whether we should require the posting of an email address that will serve as a station contact for the public file.

30. *Sponsorship Identifications.* Section 317 of the Communications Act requires that broadcasters disclose to their listeners or viewers if a matter has been aired in exchange for money, services, or other valuable consideration. The Commission's sponsorship identification rules currently require that stations provide an on-air disclosure when content is paid for, furnished, or sponsored by an outside party. The *INC Report* discussed examples of ''pay-for-play'' arrangements at local TV stations, where ''advertisers have been allowed to dictate, shape or sculpt news or editorial content.'' The *INC Report* expressed concern that this practice could have negative implications for the community's trust in local TV. The *INC Report* recommended that the Commission require that the on-air disclosures for such ''pay-for-play'' arrangements, which are already required to be disclosed on-air, be available online, perhaps as part of the public file, in order to create a permanent, searchable record of which stations use these arrangements and to afford easy access by consumers and watchdog groups to this information. PIPAC has recently recommended that, when a broadcaster airs news or information programming that would require an on-air disclosure of a sponsor under the FCC sponsorship identification rules, the licensee should also post that information in its online public file.

31. With the exception of sponsored political advertising and certain issue advertising, the Commission only requires that the sponsorship identification announcement occur once

during the programming and remain on the screen long enough to be read or heard by an average viewer.[20] Section 317 requires stations to announce sponsorship information during the programming, and the implementing rule has long had an additional public file recordkeeping component for political and controversial issue announcements.[21] The Commission has explained that such recordkeeping furthers the rule's underlying purpose. Given the fleeting nature of all disclosures, we believe it would also be useful to include such on-air disclosures in television broadcasters' online public file obligations, by requiring stations to list such sponsors in their online public file. Requiring a list of sponsors will create an accessible record of such sponsorships, and will allow interested parties to keep track of the number and extent of such sponsorships. We believe that such a list will further a central principle of the rule, which is that ''listeners are entitled to know by whom they are being persuaded.'' We seek comment on this proposal, and on our authority to impose such a requirement. We also seek input on how burdensome this requirement would be for broadcasters. This information must already be collected and disclosed on the air. What additional burden would be involved in listing the sponsors of such disclosures in the online public file? While the *INC Report* only suggests the online disclosure of sponsorship identification of news programming, we do not propose to limit disclosure to certain types of programming, but to include all sponsorships that require a special on-air disclosure. However, sponsorship identification announcements which are exempted under current rules, such as in situations involving commercial product advertisements where it's clear that the product is a sponsorship, will not need to be included in the online disclosures. We are only proposing to make disclosures currently required by section 317 and our rules more accessible. We seek comment on this proposal, including how long broadcasters should be required to retain this information.

32. *Sharing Agreements.* PIPAC has recently recommended that sharing agreements among licensees, such as local news sharing and shared services agreements, should be available in the public file. Sharing agreements are contracts between licensees where one licensee provides certain station-related services to another station, including administrative, sales, and/or programming support, in order to obtain certain efficiencies.[22] PIPAC notes that the *INC Report* found that some stations are outsourcing their news production or engaging in other forms of cooperative newsgathering. PIPAC argues that unless such agreements are available online it will be extremely difficult for members of the public, or the Commission, to learn about such agreements, which affect control of the station and production of local news and other programming. We note that the Commission already requires the disclosure of certain sharing agreements, such as time brokerage and joint sales agreements. We seek comment on whether disclosure of these similar agreements would serve the public interest, and whether stations should be required to disclose such items in their online public file. We seek comment on whether such agreements should be subject to the same redaction allowances that are made available to joint sales agreements and time brokerage agreements. We also seek comments on the burdens of adopting such a requirement.

4. Format

33. The *INC Report* finds that information ''needs to be put out in standardized, machine-readable, structured formats that make it easy for programmers to create new applications that can present the data in more useful formats, or combine one agency's information with another,'' and that ''data releases should include an Application Programming Interface (API) that allows the data to be shared easily with other computers and applications.'' With respect to broadcasters' public files in particular, the *INC Report* states that ''[o]nline disclosure should be done according to the principles advocated by experts on transparency: in standardized, machine readable and structured formats.''

34. We agree that some of the information in the public file would be of much greater benefit to the public if made available in a structured or database-friendly format that can be aggregated, manipulated, and more easily analyzed. That is our ultimate goal. We recognize, however, that converting the files to this format will take time and money. We tentatively conclude that we should not delay the benefits of having the public file available online, and therefore propose to not require broadcasters to alter the form of documents already in existence prior to posting them to the online public file at this time. However, we seek comment here on issues we should consider in the implementation of such an advanced database. Would the investment and effort to establish a searchable database yield improvement from simply having the broadcasters post the documents online in their current format? What steps would need to be taken in order to ensure the uploading of searchable documents by the broadcasters could be accomplished in a non-burdensome way? We believe that further consideration of the issue may lead to creation of more useful tools to analyze the information produced in the online public file. We seek comment, however, on whether broadcasters should be required to upload any electronic documents in their existing format to the extent feasible. For example, to the extent that a required filing already exists in a searchable format—such as Microsoft Word ''.doc'' format or non-copy protect text-searchable ''pdf'' format for text filings, or ''native formats'' such as spreadsheets in Microsoft ''.xml'' format for non-text filings—should broadcasters be expected to upload the filing in that format to the extent technically feasible? We believe that requiring broadcasters to do so could increase usability and facilitate text searches. Should we require that documents created after the effective date of rules adopted in this proceeding be posted in a searchable format? Would such a requirement be unduly burdensome? To the extent documents are filed in a non-searchable format, should the Commission digitize the documents and perform optical character recognition (''OCR'')? Given that native and primary electronic formats are more reliable than OCR, we believe that it will be in every station's best interests to provide documents in native and primary electronic formats to the extent feasible.

[20] Political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance longer than five minutes ''for which any film, record, transcription, talent, script, or other material or service of any kind is furnished * * * to a station as inducement for the broadcasting of such matter'' requires a sponsorship identification announcement both at the beginning and the conclusion of the broadcast programming containing the announcement. 47 CFR 73.1212(d).

[21] 47 U.S.C. 317(a)(1); 47 CFR 73.1212(e). *See also KGVO Broadcasting Inc.,* 9 FCC Rcd 6396 (1994). Section 315(e) of the Act includes a similar requirement to place a list of executives of a sponsoring entity in the political file for certain political matter. 47 U.S.C. 315(e)(2)(G). This matter includes, among other things, a national legislative issue of public importance. *See* 47 U.S.C. 315(e)(1)(B)(iii).

[22] Some sharing agreements can affect at the Commission's attribution rules, which define what interests are counted for purposes of applying the Commission's broadcast ownership rules. *See generally* 47 CFR 73.3555.

35. We also seek comment on what metadata should be made available in the online public file. Should users be able to access when each item was uploaded to the file? Should we also make available metadata about who uploaded the item? Are there concerns about metadata disclosures for confidential or privileged information? If so, what steps should the Commission and stations take to manage these concerns?

*B. Announcements and Links*

36. In the 2007 *Report and Order,* the Commission determined that viewers should be notified of the existence, location, and accessibility of the station's public file, as this would increase viewer awareness and help promote the ongoing dialogue between a station and the viewers it is licensed to serve. Therefore, the Commission required that licensees provide such notice on-air twice daily during the regular station identification announcements required under our rules, with at least one announcement to be aired between 6 p.m. and midnight. Reconsideration petitioners argued that twice daily announcements were excessive. Public television stations argued that television station identifications are very limited in length, and that the *Report and Order* did not provide a reason for changing course from the tentative conclusion made in the *NPRM* that the Commission should not require announcements. They proposed that the Commission reduce this requirement to a few times a week, at most.

37. We continue to believe that viewers should be notified of the existence, location, and accessibility of the station's public file; if most viewers are unaware of the existence of the public file or how to access it, its usefulness will be greatly diminished. We seek comment on how best to achieve this goal. Would requiring on-air announcements a few times a week be sufficient? Should we dictate day part requirements for certain announcements to be sure a large number of viewers are reached? We propose that stations be required to announce the existence, location, and accessibility of the station's public file three times a week as part of the station identification. We also propose that the notice state that the station's public file is available for inspection and that consumers can view it at the Commission's Web site, and that at least one of the announcements must occur between the hours of 6 p.m. and midnight. We seek comment on these proposals.

38. PIPAC proposes that a link to the online public file appear on a broadcaster's home page, along with contact information for people with disabilities to use if they have concerns. They note that for a person with disabilities already struggling with an inaccessible site, the burden of searching through several pages or levels becomes an insurmountable barrier. We tentatively agree that stations that have Web sites should be required to place a link to the public file on their home page, not just to assist the disabled community, but to assist all members of the public who are looking for more information about a licensee. We seek comment on PIPAC's proposal that stations also list on their home page contact information for people with disabilities. What types of contact information would be most useful?

*C. Radio*

39. Given this proceeding's genesis in the DTV transition, the *Report and Order* was limited to television stations. The Commission later sought comment on implementing an online public file requirement for analog and digital radio stations in the *Further Notice of Proposed Rulemaking* in the Digital Audio Broadcasting proceeding.[23]

40. This *FNPRM,* like all other items in this docket, is directed toward television broadcasters. We may consider requiring radio licensees to abide by similar reforms to their public file requirements at a later date. We believe, however, that there are benefits to requiring television licensees to implement enhanced disclosure requirements first. Television stations have been significantly more involved in considering these issues, from the *NOI* in 1999 through the 2007 *Report and Order.* Further, it may ease the initial implementation of a Commission-hosted online public file if we begin the process with the much smaller number of television licensees than with all broadcasters. Finally, we foresee that there may be some radio-specific concerns that we will need to address prior to implementing an online public file requirement on radio stations. We thus tentatively conclude not to include radio licensees in this proceeding.

## IV. Cost/Benefit Analysis

41. In proposing rules to ensure that the public has adequate access to information about how broadcasters are serving their communities, we intend to look at the many factors involved in effective enhanced disclosure. This will ensure that the rules serve their intended purpose without posing an undue burden on industry. There are two key criteria for the success of such an approach.

42. First, acknowledging the potential difficulty of quantifying benefits and burdens, we need to determine whether the proposed disclosure rules will significantly benefit the public. Second, we seek to maximize the benefits to the public from our proposed rules while taking into consideration the burden of compliance on broadcasters. These costs and benefits can have many dimensions, including cost implications for industry, public interest benefits to viewers, and other less tangible benefits.

43. To address the first criterion, we seek comment on the best ways to ensure that the forms of disclosure discussed in this *FNPRM* will actually benefit the public. While most of the information to be included in the online public file is largely the same as information already being provided in the paper file, we seek comment on the value and use of the potential items to be added to the online public file, as discussed above. Further, we seek comment on any considerations regarding the manner in which our proposals could be implemented that would increase the number of people who will benefit from such rules, and the nature of these benefits. In particular, we seek comment on the best ways to ensure that information is more readily accessible to the public. While we believe that the proposed rules will increase its accessibility, by replacing the paper version of the public file with an online version, we seek further suggestions for increasing accessibility.

44. To address the second criterion, we seek comment on the nature and magnitude of the costs and benefits of our new streamlined proposals. We recognize that these may vary by broadcaster, and seek comment on possible differential impacts, including size and type of broadcaster. We seek specific information about whether, how, and by how much broadcasters may be impacted differently in terms of the costs and benefits of our proposed rules. We also seek comment on the most cost-effective approach for modifying existing policies and practices to achieve the goals of this proceeding.

45. To the extent possible, we request comment that will enable us to balance the positive benefits of these proposed disclosure rules with the costs that they may impose on broadcasters. We

[23] *See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10391 (2007).

recognize that costs and benefits will vary depending on the specific documents and format we require broadcasters to submit for inclusion in an online public file to be hosted by the Commission. A rule that documents may be uploaded in any format will likely impose minimal burdens on broadcasters as compared to a requirement that only documents in standardized formats will be accepted, as at least some broadcasters may need to recreate or reformat their documents prior to submission. The benefit the public reaps from access to information about how broadcasters are serving their communities will similarly vary depending on the specific documents and formats we require broadcasters to submit. Information that is submitted in non-standardized formats will be useful to members of the public who are interested in only one or a few television stations. Researchers, however, need access to standardized data that are aggregable and searchable in order for the data to be useful in their analyses of industry performance. We request that commenters provide specific data and information, such as actual or estimated dollar figures for each specific cost or benefit addressed, including a description of how the data or information was calculated or obtained and any supporting documentation or other evidentiary support. All comments will be considered and given appropriate weight. Vague or unsupported assertions regarding costs or benefits generally can be expected to receive less weight and be less persuasive than more specific and supported statements.

*A. Online Public File*

46. While it may be difficult to quantify the benefits of an online public file requirement, we seek comment on ways to do so. Is there a way to quantify the value of improving the quality of information presented to consumers? We also seek comment on the costs, which should be much more quantifiable. We received cost data from the commenters and petitioners in response to the *NPRM* and discussed them in the *Report and Order.* Given the technological advances since these estimates were created, the fact that the Commission is contemplating becoming the host of the online public file requirement, and that we are proposing to modify the required materials to be posted to the file, we seek updated cost estimates. Because most of the items that we are seeking to include in the online public file are already available in an electronic format, and because we are proposing to largely eliminate the paper public file, we believe that the costs of uploading these files to the online public file will be less burdensome than originally anticipated.

47. We seek to weigh the costs of an online public file requirement against the benefits to the public of Internet accessibility of the information. It is beneficial for the community to have Internet access to information it may not otherwise be able to obtain. Making information available in the online public file will educate consumers on issues that they might not otherwise know about, absent an ability to visit a station to inspect the public file, and will assist consumers in educating themselves about the licensee and its programming. Making this information readily accessible will also assist the Commission and Congress in formulating public policy about broadcasting and other media issues. As discussed in previous Orders, the Commission has found that each of the items required to be placed in the public file is important, and needs to be accessible to the public. Internet access to such information improves public access and reduces some burdens on broadcasters. As discussed throughout the *FNPRM,* we seek comment on further ways to relieve burdens on broadcasters in creating the online public file requirement. Should we consider creating different requirements for small television broadcasters?

*B. Announcements*

48. Finally, we seek to quantify the costs and benefits associated with notifying the public of the existence, location, and accessibility of the station's public file. The benefits of such a requirement, increasing viewer awareness and helping promote the ongoing dialogue between a station and the viewers they are licensed to serve, are difficult to quantify, but we seek comment on how to do so. We also seek comment on the projected costs of such announcements. Would requiring three announcements a week be a justifiable burden on broadcasters? Is the amount of the burden affected by the time of day that the announcement is made?

## V. Procedural Matters

*A. Regulatory Flexibility Analysis*

49. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *FNRPM* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments. The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register.**

1. Need for, and Objectives of, the Proposed Rule Changes

50. One of a television broadcaster's fundamental public interest obligations is to air programming responsive to the needs and interests of its community of license. Broadcasters are afforded considerable flexibility in how they meet that obligation. Among other things, they are required to maintain a public inspection file, which gives the public access to information about the station's operations. The *FNPRM* seeks to make information regarding how a television broadcast station serves the public interest easier to understand and more accessible.

51. The *FNPRM* seeks comment on rule changes that would:

- Replace the requirement that television stations maintain a paper public file at their main studios with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted by the Commission;
- Reduce the number of documents that television stations would be required to upload to an online public file, by automatically linking to information already collected by the Commission;
- Streamline the information required to be kept in the file, such as by excluding letters and emails from the public;
- Require that sponsorship identification, now disclosed only on-air, should also be disclosed online, and require disclosure of online shared services agreements; and
- Make the online public file standardized and searchable, further improving the usefulness of the data.

2. Legal Basis

52. The proposed action is authorized pursuant to sections 1, 2, 4(i), 303, and 405 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 303, and 405.

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

53. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by

the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

54. *Television Broadcasting.* The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [24] The Commission has estimated the number of licensed commercial television stations to be 1,390. According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (''NCE'') television stations to be 391. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

55. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

56. Certain rule changes proposed in the *FNPRM* would affect reporting, recordkeeping, or other compliance requirements. Television broadcasters are currently required to maintain a copy of their public inspection files at their main studios. The *FNPRM* proposes to replace that requirement with a requirement to submit documents for inclusion in an online public file, including the political file, to be hosted on the Commission's Web site. Items in the public file that must also be filed with the Commission, including FCC authorizations, applications and related materials, contour maps, ownership reports and related materials, portions of the equal employment opportunity file, the public and broadcasting manual, children's television programming reports (Form 398), and DTV transition education reports (Form 388), will be automatically imported into the station's online public file. Television stations will only be responsible for uploading and maintaining items that are not required to be filed with the Commission under any other rule. The *FNPRM* also proposes to exclude some items from the online public file requirement, such as letters and emails from the public, and proposes to add other items to the online public file requirement, such as whether sponsorship identification, now disclosed only on-air, should also be disclosed online, and whether to require disclosure of online shared services agreements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

57. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

58. The *FNPRM* seeks to minimize reporting requirements on all television broadcasters, by having the Commission host the online public file. The previous *Report and Order* in this proceeding, which has been vacated, required stations to host their own public file. Having the Commission host the public file will ease the administrative burdens on all broadcasters. More than a third of the required contents of the public file have to be filed with the Commission, and the *FNPRM* proposes to import and update information that must already be filed with the Commission automatically, creating efficiencies for broadcasters. Accordingly, since no significant economic impact is imposed by the proposed rules on small entities, no discussion of alternatives is warranted.

59. Overall, in proposing rules governing an online public file requirement, we believe that we have appropriately balanced the interests of the public against the interests of the entities who will be subject to the rules, including those that are smaller entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

60. None.

*B. Paperwork Reduction Act Analysis*

61. This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we

[24] *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*C. Ex Parte Rules*

62. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

*D. Filing Requirements*

63. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'').

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/*.
- *Paper Filers:* Parties who choose to file by paper must file an original and one of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

64. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

65. *Accessibility Information.* To request information in accessible formats (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

66. *Additional Information.* For additional information on this proceeding, contact Holly Saurer of the Media Bureau, Policy Division, (202) 418–7283, or via email at *holly.saurer@fcc.gov*.

## VI. Ordering Clauses

67. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 303, and 307 of the Communications Act, 47 U.S.C. 151, 152, 154(i), 303, and 307, this *Further Notice of Proposed Rulemaking* is *adopted.*

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects 47 CFR Part 73**

Television.

Federal Communications Commission

**Marlene H. Dortch,**

*Secretary.*

## Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.1201 is amended by revising paragraph (b)(3) to read as follows:

### § 73.1201 Station identification.

* * * * *

(b)

* * * * *

(3) Three times a week, the station identification for television stations must include a notice stating that the station's public file is available for viewing at the FCC's Web site. At least one of the announcements must occur between the hours of 6 p.m. and midnight.

3. Section 73.1212 is amended by revising paragraph (e) to read as follows:

### § 73.1212 Sponsorship Identification; list retention; related requirements.

* * * * *

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred

to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified under § 73.3526. If the broadcast is originated by a network, the list may, instead, be retained at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526. Such lists shall be kept and made available for a period of two years.

* * * * *

4. Section 73.1943 is amended by adding paragraph (d) to read as follows:

**§ 73.1943 Political file.**

* * * * *

(d) *Location of the file.* A television station licensee or applicant must also place all of the contents of its political file on the Commission's Web site. This electronic political file must be updated in the same manner as paragraph (c) of this section.

5. Section 73.3526 is amended by revising paragraph (b) and adding paragraphs (e)(18) and (e)(19) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by paragraph (e)(9) of this section, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant shall place the contents of its public inspection file required by paragraph (e) of this section on the Commission's Web site, with the exception of letters and emails from the public as required by paragraph (e)(9) of this section, which will be retained at the station in the manner discussed in paragraph (1) of this section. A station must link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site.

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: Authorizations, applications, contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; the public and broadcasting; Children's television programming reports; and DTV transition education reports. In the event that the online public file does not reflect such required information, the licensee will be responsible for posting such material.

* * * * *

(e) * * *

(18) *Sharing agreements.* For commercial television stations, a copy of every agreement or contract involving sharing agreements for the station, including local news sharing agreements and shared services agreements, whether the agreement involves stations in the same markets or in differing markets, with confidential or proprietary information redacted where appropriate.

(19) *Sponsorship identifications.* For commercial television stations, a list of all sponsorship identifications that must be announced on-air pursuant to 47 CFR 73.1212.

* * * * *

6. Section 73.3527 is amended by revising paragraph (b) to read as follows:

**§ 73.3527 Local public inspection file of noncommercial educational stations.**

* * * * *

(b) *Location of the file.* The public inspection file shall be located as follows:

(1) For radio licensees, a hard copy of the public inspection file shall be maintained at the main studio of the station. For television licensees, letters and emails from the public, as required by paragraph (e)(9) of this section, shall be maintained at the main studio of the station. An applicant for a new station or change of community shall maintain its file at an accessible place in the proposed community of license or at its proposed main studio.

(2) A television station licensee or applicant shall place the contents of its public inspection file on the Commission's Web site, with the exception of letters and emails from the public, which will be retained at the station in the manner discussed in paragraph (1) of this section. A station must link to the public inspection file hosted on the Commission's Web site from the home page of its own Web site, if the station has a Web site.

(3) The Commission will automatically link the following items to the electronic version of all licensee and applicant public inspection files, to the extent that the Commission has these items electronically: Contour maps; ownership reports and related materials; portions of the Equal Employment Opportunity file held by the Commission; and the public and broadcasting.

[FR Doc. 2011–30009 Filed 11–21–11; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 76, No. 225

Tuesday, November 22, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

November 16, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden 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 are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Domestic Quarantines.

*OMB Control Number:* 0579–0088.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701–7772) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service, (APHIS) is responsible for implementing this Act and does so through the enforcement of its domestic quarantine regulations contained in Title 7 of the Code of Federal Regulations, CFR part 301. Administering these regulations often requires APHIS to collect information from a variety of individuals who are involved in growing, packing, handling, transporting, plants and plant products. The information collected from these individuals is vital to helping ensure that injurious plant diseases and insect pests do not spread within the United States. Information to be collected is necessary to determine compliance with domestic quarantines. Federal/State domestic quarantines are necessary to regulate the movement of articles from infested areas to noninfested area. Collecting information requires the use of a number of forms and documents. APHIS will collect information using various forms and documents.

*Need and Use of the Information:* APHIS will collect information by interviewing growers and shippers at the time the inspections are being conducted and by having growers and shippers of exported plants and plant products complete an application for a transit permit. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information obtained will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

*Description of Respondents:* Business or other for-profit; Farms; State, Local or Tribal Government.

*Number of Respondents:* 28,244.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 512,147.

### Animal and Plant Health Inspection Service

*Title:* Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products.

*OMB Control Number:* 0579–0234.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. The AHPA is contained in Title X, Subtitle E, Sections 10401–18 of Public Law 107–171, May 13, 2002, the Farm Security and Rural Investment Act of 2002. The Animal and Plant Health Inspection Service (APHIS) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases. The regulations in 9 CFR parts 91, 93, 94, 95 and 96 govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of diseases, such as bovine spongiform encephalopathy (BSE), a chronic degenerative disease that affects the central nervous system of cattle.

*Need and Use of the Information:* APHIS will collect the information to prevent BSE incursion into the United States using the following: (1) Import Permit Application (VS Form 16–3); (2) Certificate for Inedible Processed Animal Origin Materials and Products from BSE-Free Regions; (3) Cooperative agreements with foreign facilities that process and store regulated materials and products destined for import into the United States; (4) Certification Statement for Products from BSE Minimal Risk Regions and Japan, and Inedible Processed Animal Proteins of Non-Ruminant Origin from BSE-Affected Regions; (5) Seals; (6) Notification of designation of person authorized to break seals; (7) Agreements with slaughter facilities concerning the use of seals on conveyances transporting animals from BSE Minimal Risk Regions; (8) Form for

animals imported for immediate slaughter (VS Form 17–33); Certification statement for ruminants. Failure to collect this information would make it impossible for APHIS to effectively prevent BSE-contaminated animal products from entering the United States.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 5,949.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 70,324.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2011–30051 Filed 11–21–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Funding for the Guaranteed Loan Interest Assistance Program; Farm Loan Programs

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Farm Service Agency (FSA) is no longer accepting applications for guaranteed loans with interest assistance because of a lack of program funding.

**DATES:** *Effective Date:* November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Randi Sheffer, (202) 720–3889. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION:** The Consolidated Farm and Rural Development Act of 1972 (Pub. L. 92–419, CONACT), as amended, authorizes FSA's Guaranteed Loan Program. The program provides lenders with a guarantee of up to 95 percent of principal and interest on the loan. The FSA guarantee permits lenders to make agricultural credit available to farmers who would be unable to obtain sufficient credit to fund their farming operations without the guarantee. Pursuant to section 351 of the CONACT (7 U.S.C. 1999) FSA also subsidizes 4 percent of the interest rate on guaranteed loans to qualifying borrowers under its Interest Assistance Program. Interest assistance is subject to additional eligibility criteria beyond that required for the initial guarantee. The regulations implementing FSA's Guaranteed Loan Program and IA can be found in 7 CFR part 762.

This notice announces that FSA is no longer accepting applications under the Interest Assistance Program due to a lack of funding. However, guaranteed loans will still be available without interest assistance.

This notice does not invalidate existing interest assistance agreements. Existing agreements will be honored, claims will be paid as agreed, and all eligible servicing options can be pursued. For further information on specific applications and loans, current guaranteed loan borrowers should contact their FSA State or county office; potential guaranteed loan applicants should contact their lender. FSA office locations can be found at *http://www.fsa.usda.gov.* A notice will be published in the **Federal Register** announcing the date FSA will resume accepting applications for the Interest Assistance Program if funding becomes available.

Signed on November 17, 2011.

**Bruce Nelson,**

*Administrator, Farm Service Agency.*

[FR Doc. 2011–30107 Filed 11–21–11; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Federal Economic Statistics Advisory Committee Meeting

**AGENCY:** Bureau of the Census, Department of Commerce.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** The Bureau of the Census (U.S. Census Bureau) is giving notice of a meeting of the Federal Economic Statistics Advisory Committee (FESAC). The Committee will advise the Directors of the Economics and Statistics Administration's (ESA) two statistical agencies, the Bureau of Economic Analysis (BEA) and the Census Bureau, and the Commissioner of the Department of Labor's Bureau of Labor Statistics (BLS) on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. Last minute changes to the agenda are possible, which could prevent giving advance public notice of schedule adjustments.

**DATE:** December 9, 2011. The meeting will begin at approximately 9 a.m. and adjourn at approximately 5 p.m.

**ADDRESSES:** The meeting will be held at the Bureau of Economic Analysis, 1441 L. Street NW., 2nd Floor Conference Suite, Washington, DC 20230–0001.

**FOR FURTHER INFORMATION CONTACT:** Barbara K. Atrostic, Designated Federal Official, Department of Commerce, U.S. Census Bureau, Center for Economic Studies Room 2K135, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–6442. For TTY callers, please use the Federal Relay Service 1 (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Members of the FESAC are appointed by the Secretary of Commerce. The Committee provides scientific and technical expertise, as appropriate, to the Directors of the BEA, the Census Bureau, and the Commissioner of the Department of Labor's BLS, on statistical methodology and other technical matters related to the collection, tabulation, and analysis of federal economic statistics. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, and Section10).

The meeting is open to the public, and a brief period is set aside for public comments and questions. Persons with extensive questions or statements must submit them in writing at least three days before the meeting to the Designated Federal Official named above. If you plan to attend the meeting, please register by Monday, December 5, 2011. You may access the online registration form with the following link: *http://www.regonline.com/fesac_dec2011_meeting.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Designated Federal Official as soon as known, and preferably two weeks prior to the meeting.

Dated: November 15, 2011.

**Robert M. Groves,**

*Director, Bureau of the Census.*

[FR Doc. 2011–30129 Filed 11–21–11; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet December 7, 2011, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between

Constitution and Pennsylvania Avenues NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

**Agenda**

*Public Session*

1. Opening remarks by the Chairman.
2. Opening remarks by Bureau of Industry and Security.
3. Export Enforcement update.
4. Regulations update.
5. Working group reports.
6. Automated Export System (AES) update.
7. Presentation of papers or comments by the Public.

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than November 30, 2011.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482–2813.

Dated: November 16, 2011

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2011–30052 Filed 11–21–11; 8:45 am]

BILLING CODE 3510–JT–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–916;C–570–917]**

### Laminated Woven Sacks From the People's Republic of China: Negative Preliminary Determination of Circumvention of the Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**Preliminary Determination**

The Department of Commerce (''the Department'') preliminarily determines that the laminated woven sacks subject to this inquiry are not circumventing the antidumping and countervailing duty orders on laminated woven sacks from the People's Republic of China (''PRC''), as provided in section 781(d) of the Tariff Act of 1930, as amended (''the Act'').[1]

**DATES:** *Effective Date:* November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jamie Blair-Walker, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–2615.

**SUPPLEMENTARY INFORMATION:**

*Background*

On January 26, 2011, pursuant to sections 781(c) and (d) of the Act, and 19 CFR 351.225(i) and (j), Petitioners[2] submitted requests for the Department to initiate and conduct both a minor alterations inquiry and a later-developed merchandise anti-circumvention inquiry to determine whether laminated woven sacks printed with two colors in register and with the use of a screening process are circumventing the *Orders.*[3] On March 25, 2011, Petitioners withdrew their request for the Department to initiate a minor alterations anti-circumvention inquiry pursuant to 781(c) of the Act and 19 CFR 351.225(i).[4] On April 28, 2011, the Department initiated a later-developed merchandise anti-circumvention inquiry.[5]

On May 3, July 18, and September 2, 2011, the Department issued various questionnaires to interested parties. On July 15, 2011, the Department held a meeting with Petitioners to discuss the anti-circumvention inquiry.

*Scope of the Orders*

The merchandise covered by the orders is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (''BOPP'') or to an exterior ply of paper that is suitable for high quality print graphics;[6] printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

*Scope of the Anti-Circumvention Inquiry*

The merchandise subject to the anti-circumvention inquiry is laminated

[1] *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China,* 73 FR 45941 (August 7, 2008); *see also Laminated Woven Sacks From the People's Republic of China: Countervailing Duty Order,* 73 FR 45955 (August 7, 2008), (collectively, ''*Orders*'').

[2] The Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation, (collectively, ''Petitioners'').

[3] *See* Petitioners' Requests for Circumvention Inquiries dated January 21, 2011 and February 4, 2011.

[4] *See* Petitioners' Partial Withdrawal of Request For Determination of Circumvention (Printed Ink Colors) dated March 25, 2011.

[5] *See Laminated Woven Sacks From the People's Republic of China: Initiation of Anti-Circumvention Inquiry,* 76 FR 23791 (April 28, 2011) (''*Initiation Notice*'').

[6] ''Paper suitable for high quality print graphics,'' as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

woven sacks produced with two ink colors printed in register and a screening process (''screening-process sacks''). Petitioners allege that Chinese producers of screening-process sacks have adapted the screening process to create graphics that appear to have three or more distinct colors visible, although they are produced using only two inks and a screen. Petitioners contend that such graphics would normally be printed using three inks printed in register at three different print stations, which would then make them subject merchandise. However, by adapting the screening process, Petitioners state that Chinese producers of screening-process sacks are able to produce similar graphics while only using two inks, thus making merchandise that is out of scope and not subject to antidumping and countervailing duties.

The screening process at issue, as described by interested parties, only uses two ink colors printed in register at two different print stations. However, the artwork, by use of a screen, allows for different shades of a single color to appear on the bag. Thus, when printed, the screening-process sacks appear to have been printed with more than two colored inks because more than two distinct colors are visible on the finished product. As an example of the screening-process sacks, the Department placed on the record of both proceedings five laminated woven sacks imported by Shapiro: Two individual Manna Pro Horse Feed sacks, two individual Red Head Deer Corn sacks, and one Manna Pro Calf-Manna sack.[7]

*Negative Preliminary Determination of Circumvention*

For the reasons described below, we preliminarily determine that the screening-process sacks are not later-developed merchandise because they were commercially available at the time of the initiation of the less-than-fair-value (''LTFV'') investigation on laminated woven sacks from the PRC. Therefore, we also preliminarily determine that the screening-process sacks are not circumventing the *Orders* within the meaning of section 781(d) of the Act.

*Applicable Statute*

Section 781(d)(1) of the Act provides that the Department may find circumvention of an antidumping or countervailing duty order when merchandise is developed after an investigation is initiated (''later-developed merchandise''). In conducting later-developed merchandise anti-circumvention inquiries, under section 781(d)(1) of the Act, the Department first determines whether the merchandise under consideration is ''later-developed.''[8] To do so, the Department examines whether the merchandise at issue was commercially available at the time of the initiation of the LTFV investigation.[9] We define commercial availability as ''present in the commercial market or fully developed, *i.e.,* tested and ready for commercial production, but not yet in the commercial market.''[10] In other words, the Department normally considers: (1) Whether it was possible, at all, to manufacture the product in question; and (2) if the technology existed, whether the product was available in the market.[11]

If the Department determines that such merchandise was not commercially available at the time of the initiation of the LTFV investigation, and is thus later-developed, the Department will consider whether the later-developed merchandise is covered by the order by evaluating whether the general physical characteristics of the merchandise under consideration are the same as subject merchandise covered by the order,[12] whether the expectations of the ultimate purchasers of the merchandise under consideration are no different than the expectations of the ultimate purchasers of subject merchandise,[13] whether the ultimate use of the subject merchandise and the merchandise under consideration are the same,[14] whether the channels of trade of both products are the same,[15] and whether there are any differences in the advertisement and display of both products.[16] The Department, after taking into account any advice provided by the United States International Trade Commission (''ITC''), under section 781(e) of the Act, may include such imported merchandise within the scope of an order at any time an order is in effect.

*Commercial Availability Analysis*

In determining the commercial availability of the screening-process sacks at issue in this inquiry, the Department first examined whether it was possible to produce the merchandise. The Department then examined if there was evidence of the screening-process sacks being commercially available in the market prior to the initiation of the LTFV investigation.

As noted by the ITC, the developing nature of the industry at the time of the LTFV investigation could have had tempered the demand for screening-process sacks.[17] Therefore, the Department examined whether the technology needed to produce screening-process sacks existed prior to the LTFV investigation as part of these preliminary results. Based on the record evidence, the Department finds that the technology for producing screening-process sacks was available prior to the LTFV investigation. From 2005–2007, all interested parties providing information and comments for this record purchased the technology to use a screening process in production of laminated woven sacks, although the number of inks that were printed on the laminated woven sacks varied for different products (*i.e.,* included the use of only two inks as well as the use of

[7] *See* Memo to the File from Jamie Blair-Walker regarding Anti-circumvention Inquiry of Laminated Woven Sacks from the People's Republic of China on the subject of Meeting with Counsel for the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation, dated July 15, 2011.

[8] *See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order,* 71 FR 59075 (October 6, 2006) (''*Candles Anticircumvention Final*'') and accompanying Issues and Decision Memorandum at Comment 4; *see also Erasable Programmable Read Only Memories from Japan; Final Scope Ruling,* 57 FR 11599 (April 6, 1992) (''*EPROMs from Japan*''); *Electrolytic Manganese Dioxide from Japan; Final Scope Ruling,* 57 FR 395 (January 6, 1992)(''*EMD from Japan*''); *Portable Electronic Typewriters from Japan,* 55 FR 47358 (November 13, 1990).

[9] *See Candles Anticircumvention Final,* 71 FR at 59077 and Comment 4, affirmed by *Target Corp. v. United States,* 626 F. Supp. 2d 1285 (CIT 2009), and *Target Corp.* v. *United States,* 609 F.3d 1352, 1358–1360 (Fed. Cir. 2010) (''*Target Corp. III*'') (holding that Commerce's interpretation of later-developed as turning on whether the merchandise was commercially available at the time of the investigation is reasonable).

[10] *See Target Corp. III,* 609 F.3d at 1358; *see also Candles Anti-circumvention Final* at Comment 4.

[11] *See Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 71 FR 32033, 32038 (June 2, 2006), *unchanged in Candles Anticircumvention Final;* see *also EPROMs from Japan,* 57 FR at 11602–3 (examining whether the technology to develop the new product existed at the time of the original investigation); *Television Receiving Sets, Monochrome and Color, from Japan: Final Scope Ruling,* 56 FR 66841 (December 26, 1991) (noting that LCD TV technology did not exist at the time the original product descriptions were developed).

[12] *See* section 781(d)(1)(A) of the Act.

[13] *See* section 781(d)(1)(B) of the Act.

[14] *See* section 781(d)(1)(C) of the Act.

[15] *See* section 781(d)(1)(D) of the Act.

[16] *See* section 781(d)(1)(E) of the Act.

[17] *See Laminated Woven Sacks from China,* Investigation Nos. 701–TA–450 and 731–TA–1122 (Preliminary), ITC Publication 3942 (August 2007) (''*ITC Preliminary Determination*'') at 31.

three or more).[18] Furthermore, all parties agree that the screening technology used on laminated woven sacks was not new at the time of the initiation of the LTFV investigation.[19]

With regard to whether the screening-process sacks were available in the market at the time of the LTFV investigation, in response to the initiation of this anti-circumvention inquiry, Shapiro submitted evidence of at least one sale destined for the United States of the screening-process sacks. Specifically, Shapiro provided an invoice, packing list, bill-of-lading, purchase order, and approved screen artwork associated with the 2005 sale of the Manna Pro Horse Feed Sack.[20] The purchase order references the use of reverse printing with two inks: Red PMS 186 and Blue PMS 072.[21] The corresponding artwork, signed and approved for production on February 15, 2005, in conjunction with the related paperwork discussed above demonstrates the use of a screen in production.[22] Shapiro's supplier's use of the screening process in combination with two inks in production of laminated woven sacks beginning in 2005 was also confirmed in an affidavit from the Assistant Vice-President of Purchasing at Manna Pro, the customer that coordinates the design of, and buys, the Manna Pro Horse Feed Sack from Shapiro.[23] Shapiro also stated that it sold 147,842.50 lbs. of the Manna Pro Horse Feed Sack prior to the date of initiation of the LTFV investigation.[24] Although Shapiro states that it permanently changed the design of the art work to accommodate the use of only two inks and a screening process with respect to the specific sacks on this record after the publication of the preliminary determination in the LTFV investigation, Shapiro demonstrated that it used two inks and a screening process for some of the designs at least occasionally prior to the initiation of the LTFV investigation.[25] Finally, as demonstrated by an affidavit supplied by Commercial Packaging, the screening process has been used to produce graphics on laminated woven sacks prior to the LTFV investigation.[26] Therefore, the above information on the record demonstrates that sacks produced with a screening process and two inks were commercially available prior to the LTFV investigation.

Finally, parties provided affidavits on the record stating that using only two inks and a screening process reduces the cost of production.[27] Although Petitioners contend that, despite the use of only two print stands and fewer inks, the development of the artwork and the time needed to readjust the machinery could possibly increase the production costs of screening-process sacks versus subject merchandise, the Department finds that if the customer seeks a simpler graphic, the use of only two inks and a screening process is a viable option to produce a less complex and possibly more affordable image.[28]

As demonstrated above, the screening technology existed prior to the LTFV investigation and had been applied to laminated woven sacks since 2005 (including with the use of only two inks). Thus, the Department finds that it was possible to produce screening-process sacks prior to the LTFV investigation and concludes that the screening-process sacks were commercially available, *i.e.,* tested and ready for commercial production prior to the LTFV investigation.

*Summary of Analysis*

After analyzing the above factors, the Department has made a preliminary determination that the screening-process sacks are not later-developed merchandise.[29] The agreement of all parties that the technology was available prior to the initiation of the LTFV investigation coupled with the fact that Shapiro demonstrated the sale of screening-process sacks to the United States has led to the Department's preliminary determination that the screening-process sacks were commercially available prior to the initiation of the LTFV investigation and are therefore not later-developed merchandise. Furthermore, because the Department has preliminarily determined that the screening-process sacks are not later-developed merchandise, the Department does not need to consider the criteria in section 781(d) of the Act to determine if the screening-process sacks are subject merchandise.[30] Therefore, we preliminarily determine that, because the sacks are not later-developed merchandise, they do not circumvent the *Orders.*

*Public Comment*

Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review.[31] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments may be filed no later than five days after the deadline for filing case briefs.[32] Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[33] Case briefs and rebuttal briefs must be submitted on both proceedings.

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days after the date of publication of this notice, pursuant to 19 CFR 351.310. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. If a hearing is requested, we will notify those parties that requested a hearing of a hearing date and time.

*Final Determination*

The final determination with respect to this anti-circumvention inquiry will be issued no later than February 16, 2012, including the results of the

[18] *See* Commercial Packaging's Supplemental Questionnaire Response dated September 16, 2011 at 2; *see* also Response of the Laminated Woven Sacks Committee to the Department's Questionnaire of September 2, 2011 dated September 16, 2011 at 4; *see* also Shapiro's Supplemental Questionnaire Response dated September 16, 2011 at 2.

[19] *See* Commercial Packaging's Supplemental Questionnaire Response dated September 16, 2011 at 3; *see* also Petitioners' Questionnaire Response dated May 18, 2011 at 12; *see* also Shapiro's Supplemental Questionnaire Response dated September 16, 2011 at 2.

[20] *See* Shapiro's Comments on Initiation dated May 19, 2011 at Exhibit 1.

[21] *See* Id.

[22] *See* Id. and at Exhibit 2.

[23] *See* Id. at Exhibit 3.

[24] *See* Id. at 2.

[25] *See* Shapiro's Supplemental Questionnaire Response dated July 28, 2011 at 1.

[26] *See* Commercial Packaging's Comments on Petitioners' Submission Dated May 17, 2011 dated June 2, 2011 at 9 and Exhibit 2.

[27] *See* Shapiro's Comments on Initiation dated May 19, 2011 at Exhibit 3.

[28] *See* Commercial Packaging's Comments on Petitioners' Submission Dated May 17, 2011 dated June 2, 2011 at Exhibit 2.

[29] *See Candles Anticircumvention Final,* 71 FR at 59075 at Comment 4; *see also EPROMs from Japan; EMD from Japan; Portable Electronic Typewriters from Japan,* 55 FR 47358 (November 13, 1990).

[30] *See Electroytic Manganese Dioxide from Japan; Preliminary Scope Ruling,* 56 FR 56977 (Nov 7, 1991) (''if a product is developed before an antidumping case is initiated, the later-developed product provision is clearly inapplicable'') unchanged in final *EMD from Japan.*

[31] *See* 19 CFR 351.309(c)(1)(ii).

[32] *See* 19 CFR 351.309(d).

[33] *See* 19 CFR 351.309(c) and (d).

Department's analysis of any written comments. This preliminary negative circumvention determination is published in accordance with section 781(d) of the Act and 19 CFR 351.225.

Dated: November 15, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–30164 Filed 11–21–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–852, A–523–801, A–520–805, A–552–811]**

### Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Steve Bezirganian, Robert James (India, the United Arab Emirates, and Vietnam), or Angelica Mendoza (Oman), AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482–1131, (202) 482–0649, or (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Petitions

On October 26, 2011, the Department of Commerce (the Department) received petitions concerning imports of circular welded carbon-quality steel pipe (certain steel pipe) from India, the Sultanate of Oman (Oman), the United Arab Emirates (UAE), and the Socialist Republic of Vietnam (Vietnam) filed in proper form on behalf of Allied Tube and Conduit, JMC Steel Group, Wheatland Tube Company, and United States Steel Corporation (collectively, Petitioners). *See* Circular Welded Carbon-Quality Steel Pipe from India, Oman, the UAE, and Vietnam: Antidumping and Countervailing Duty Petitions, filed on October 26, 2011 (hereinafter, the Petitions). On November 1, 2011, the Department issued requests for additional information and clarification of certain areas of the Petitions. Petitioners filed responses to these requests on November 7, 2011 (hereinafter, the Supplement to the AD/CVD Petitions,[1] the Supplement to the AD India Petition, the Supplement to the AD Oman Petition, the Supplement to the AD United Arab Emirates Petition, and the Supplement to the AD Vietnam Petition). On November 4, 2011, the Department issued a request for additional information and clarification regarding the scope of the petitions, and Petitioners' response to this request was included in the Supplement to the AD/CVD Petitions. On November 8, 2011, Petitioners agreed to modified scope language. *See* the November 10, 2011 memorandum from Steve Bezirganian through Richard Weible to the File.

On November 8, 2011, the Department requested additional clarification on issues involving industry support. Petitioners filed a response to this request on November 10, 2011 (hereinafter, the Second Supplement to the AD/CVD Petitions). On November 8, 2011, the Department requested additional information regarding India and Vietnam. Petitioners filed responses to these requests on November 10, 2011 (hereinafter, the Second Supplement to the AD India Petition and the Second Supplement to the AD Vietnam Petition, respectively). In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of certain steel pipe from India, Oman, the UAE, and Vietnam are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act and have demonstrated sufficient industry support with respect to the antidumping duty investigations that Petitioners are requesting that the Department initiate (*see* ''Determination of Industry Support for the Petitions'' section below).

#### Period of Investigation

The period of investigation (POI) for India, Oman, and the UAE is October 1, 2010, through September 30, 2011. The POI for Vietnam is April 1, 2011, through September 30, 2011. *See* 19 CFR 351.204(b)(1).

#### Scope of Investigations

The product covered by these investigations is certain steel pipe from India, Oman, the UAE, and Vietnam. For a full description of the scopes of the investigations, *see* Appendix I (Scope of the Oman, the UAE, and Vietnam Investigations) and Appendix II (Scope of the India AD Investigation) of this notice.

#### Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. Interested parties that wish to submit comments on the scope should do so by December 5, 2011, twenty calendar days from the signature date of this notice. All comments must be filed on the records of the India, Oman, the UAE, and Vietnam antidumping duty investigations and the India, Oman, the UAE, and Vietnam countervailing duty investigations. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping Countervailing Duty Centralized Electronic Service System (IA ACCESS).[2] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.

#### Comments on Product Characteristics for Antidumping Duty Questionnaires

Interested parties may submit comments regarding the appropriate characteristics of certain steel pipe to be reported in response to the

[1] Petitioners refiled the Supplement to the AD/CVD Petitions on November 9, 2011, to include a statement that the business proprietary document ''may be released under APO.''

[2] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IAACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

Department's antidumping questionnaires. We base the product characteristics used for defining models and model matching on meaningful commercial differences among products. In addition, interested parties may comment on the order in which the characteristics should be used in model matching. Generally, the Department attempts to list the characteristics in descending order of importance. On the day of publication of this notice, the Department will post its proposal on the Import Administration Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html.* In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments by December 9, 2011. All such comments must be filed on the records of the India, Oman, the UAE, and Vietnam antidumping duty investigations. All comments and submissions to the Department must be filed electronically using IA ACCESS, as referenced above.

**Determination of Industry Support for the Petitions**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that certain steel pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from India (India AD Checklist), Antidumping Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from Oman (Oman AD Checklist), Antidumping Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from the UAE (UAE AD Checklist), and Antidumping Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from Vietnam (Vietnam AD Checklist) at Attachment II, Analysis of Industry Support for the Petitions Covering Circular Welded Carbon-Quality Steel Pipe, on file electronically via IA ACCESS. Access to IA ACCESS is available in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of Investigations,'' in Appendix I of this notice. To establish industry support, Petitioners provided their shipments of the domestic like product in 2010, and compared their shipments to the estimated total shipments of the domestic like product for the entire domestic industry. Because total industry production data for the domestic like product for 2010 is not reasonably available and Petitioners have established that shipments are a reasonable proxy for production data, we have relied upon the shipment data provided by Petitioners for purposes of measuring industry support. For further discussion, *see* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petitions established support from domestic producers accounting for more than 50 percent of the total shipments [3] of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* section 732(c)(4)(D) of the Act and India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, at Attachment II. Second, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers who support the Petitions account for at least 25 percent of the total shipments of the domestic like product. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, at Attachment II. Finally, the domestic producers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers who support the Petitions account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and

[3] As mentioned above, Petitioners have established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

Vietnam AD Checklist, each at Attachment II. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, each at Attachment II.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the antidumping duty investigations they are requesting the Department initiate. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, each at Attachment II.

**Allegations and Evidence of Material Injury and Causation**

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value (NV). In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act. Petitioners contend that the industry's injured condition is illustrated by reduced market share; reduced production, shipments, capacity, and capacity utilization; reduced employment, hours worked, and wages paid; underselling and price depression or suppression; decline in financial performance; lost sales and revenue; and increase in the volume of imports and import penetration despite overall declining demand. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Circular Welded Carbon-Quality Steel Pipe from India, Oman, the UAE, and Vietnam. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* India AD Checklist, Oman AD Checklist, UAE AD Checklist, and Vietnam AD Checklist, at Attachment III.

**Allegations of Sales at Less Than Fair Value**

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations on imports of certain steel pipe from India, Oman, the UAE, and Vietnam. The sources of data for the deductions and adjustments relating to U.S. price and normal value (including the factors of production (FOPs) for Vietnam) are discussed in the country-specific initiation checklists. *See* India AD Checklist, Oman AD Checklist, the UAE AD Checklist, and the Vietnam AD Checklist, at their respective ''Less Than Fair Value Allegation'' sections.

**Export Price**

*Vietnam*

For Vietnam, Petitioners calculated U.S. price based on one offer for sale of certain steel pipe produced in Vietnam and on two average unit values (AUVs) of products imported from Vietnam that are representative of subject merchandise.[4] For the U.S. price based on an offer for sale, consistent with the stated sales and delivery terms, Petitioners made deductions for movement expenses estimated from U.S. customs data for comparable merchandise, and a deduction for distributor mark-up. For the U.S. prices based on AUVs, the values were already on a free-along-side ship foreign port price, so no additional adjustment for international movement expenses was necessary. Petitioners did not claim any adjustment for foreign inland freight expenses. *See* Volume II of the Petitions at I–15, Exhibit II–B–1, Exhibit II–V–2, Exhibit II–V–3, and Supplement to the AD Vietnam Petition at 4. *See also* Vietnam AD Checklist for additional details.

*India*

For India, Petitioners based U.S. price on one offer for sale of certain steel pipe produced by Zenith Birla India Limited, which they also refer to as Zenith Steel Pipes and Industries Ltd., a company excluded from the current antidumping duty order on welded steel pipe and tube from India (*see* the Respondent Selection section of the notice, below), and on one AUV of products imported from India. For the U.S. price based on an offer for sale, consistent with the stated sales and delivery terms, Petitioners made deductions for movement expenses estimated from U.S. customs data for comparable merchandise, and a deduction for distributor mark-up. For the U.S. prices based on AUVs, the values were already reported at a free-along-side ship foreign port price, so no additional adjustment for international movement expenses was necessary. Petitioners did not claim any adjustment for foreign inland freight expenses. *See* Volume II of the Petitions at II–2 and Exhibits II–B–1, II–I–3, and II–1–4; Supplement to the AD India Petition at 3 and Attachment 2; and Second Supplement to the AD India Petition, at 2–3 and Attachment 1. *See also* India AD Checklist for additional details.

*Oman*

For Oman, Petitioners calculated U.S. price based on two offers for sale of certain steel pipe produced in Oman and on two AUVs of products imported from Oman. For the U.S. prices based on offers for sale, consistent with the stated sales and delivery terms, Petitioners made deductions for movement expenses estimated from U.S. customs data for comparable merchandise, and a deduction for distributor mark-up. For the U.S. prices based on AUVs, the values were already on a free-along-side ship foreign port price, so no additional adjustment for international movement expenses was necessary. Petitioners did not claim any adjustment for foreign inland freight expenses. *See* Volume II of the Petitions at II–4 through II–5 and Exhibits II–B–1, II–O–3–A and II–O–3–B and Supplement to the AD Oman Petition at 3–7 and Attachments 3 and 4. *See also* AD Oman Checklist for additional details.

*The UAE*

For the UAE, the Petitioners based U.S. price on two AUVs of products imported from the UAE. For one of the AUVs, we corrected the calculation for an error in the data provided by Petitioners. *See* UAE AD Checklist at ''Less Than Fair Value Allegation'' section. For the U.S. prices based on AUVs, the values were already on a free-along-side ship foreign port price, so no additional adjustment for international movement expenses was necessary. Petitioners did not claim any adjustment for foreign inland freight expenses. *See* Volume II of the Petitions at II–7 to II–8 and Exhibits II–U–3 and II–U–4, Supplement to the AD UAE Petition at 3–4 and Attachments 1 and 2. *See also* UAE AD Checklist for additional details.

[4] The AUVs are the average U.S. Customs value for imports from the country under a specific Harmonized Tariff Schedule of the United States (HTSUS) number, based on public U.S. Bureau of the Census data for the anticipated POI. For Vietnam, they are comparable to the normal value based on constructed value, and for India, Oman, and the United Arab Emirates, they are comparable to the home market price information provided for the normal value calculated for those countries. *See* the India AD Checklist, the Oman AD Checklist, the UAE AD Checklist, and the Vietnam AD Checklist for more details.

**Normal Value**

*Vietnam*

Petitioners state that the Department has long treated the Vietnam as a non-market economy (''NME'') country. *See* Volume II of the Petitions at II–8.

In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for Vietnam has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product is appropriately based on FOPs valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of Vietnam's NME status and the granting of separate rates to individual exporters.

Petitioners claim that India is an appropriate surrogate country because it is a market economy that is at a comparable level of economic development to Vietnam. Petitioners also believe that India is a significant producer of merchandise under consideration. *See* Volume II of the Petitions at II–8 through II–10. Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. If the Department initiates this investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs within 40 days from the date of publication of the preliminary determination.

Valuation of Raw Materials and By-Product

Petitioners calculated normal value based on consumption rates experienced by one U.S. producer. Petitioners assert that the experience of that U.S. producer is applicable to that of Vietnamese producers because that U.S. producer, like the vast majority of producers in Vietnam, is a non-integrated producer which does not manufacture the steel coils from which the subject steel pipe is produced, but instead buys the steel and converts it into subject pipe. As a result, Petitioners state, standard pipe is essentially a commodity product, produced to published specifications by many non-integrated standard pipe producers, all employing similar methods of converting raw steel into finished steel pipe. *See* Supplement to the AD Vietnam Petition, at 6.

Petitioners valued steel coils, zinc, and the by-product offset based on reasonably available, public surrogate country data, specifically, Indian import statistics from the Global Trade Atlas (GTA). *See* Volume II of the Petitions at II–11 through II–13 and Exhibit II–V–4–B–1 through Exhibit II–V–B–3, Supplement to the AD Vietnam Petition at 8, and Second Supplement to the AD Vietnam Petition at Attachment 2. Petitioners excluded from these import statistics values from countries previously determined by the Department to be NME countries. Petitioners also excluded imports from Indonesia, the Republic of Korea and Thailand, as the Department has previously excluded prices from these countries because they maintain broadly available, non-industry-specific export subsidies. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with generally available export subsidies. *See* Supplement to the AD Vietnam Petition at 8.

Valuation of Direct and Indirect Labor

Petitioners determined labor costs using the labor consumption rates derived from one U.S. producer. *See* Volume II of the Petitions at II–14. Petitioners valued labor using the wage rate used in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 76 FR 20627 (April 13, 2011). The Department recalculated wages to comport with the methodology announced on June 21, 2011. *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011). The recalculation also uses values for steel workers rather than shrimp farmers. *See* Vietnam AD Checklist at Attachment V.

Valuation of Energy

Petitioners determined electricity costs using the electricity consumption rates, in kilowatt hours, derived from one U.S. producer's experience. *See* Volume II of the Petitions at II–10 through II–11 and II–14. Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India, the source used in a recent administrative review of light walled rectangular pipe and tube from the People's Republic of China. *See* Volume II of the Petitions at II–13 (citing *Light-Walled Rectangular Pipe and Tube From the People's Republic of China: Preliminary Results of the 2008–2009 Antidumping Duty Administrative Review,* 75 FR 27308 (May 14, 2010)).

Petitioners determined natural gas costs using the natural gas consumption rates derived from one U.S. producer's experience. *See* Volume II of the Petitions at II–14. Petitioners valued natural gas using the 2009/2010 annual report of GAIL. *See* Supplement to the AD Vietnam Petition at 8.

Valuation of Factory Overhead, Selling, General and Administrative Expenses, and Profit

Petitioners calculated surrogate financial ratios (overhead, SG&A, and profit) from the annual financial statement of one Indian producer of welded pipe: the 2010–2011 Annual Report of Surya Roshni Limited (Surya). *See* Volume I of the Petitions at II–14 and II–15 and Exhibit II–V–4–F. Petitioners state that the majority of Surya's sales revenue is derived from the sale of welded pipe. Furthermore, they state that like the petitioner whose FOP data was used, Surya buys the major input, steel coils, rather than producing the steel. *See* Volume I of the Petition at II–15. We find that Petitioners' use of Surya as the source for the surrogate financial expenses to be acceptable for purposes of initiation.

Exchange Rates

Petitioners made Indian rupee/U.S. dollar (USD) conversions based on average exchange rates for the POI, based on Federal Reserve exchange rates. *See* Volume II of the Petitions at II–V–4 and Exhibit II–V–4.

*India, Oman, and the UAE*

For India, Oman, and the UAE, the Petitioners calculated NV for certain steel pipe using information they were able to obtain about home market prices.

For India, Petitioners based normal value on a price quote for a single product. Because the price quote was on an ex-factory basis, no adjustments were needed. *See* Volume II of the Petitions at Exhibits II–A–1, II–A–2 and II–I–1, and Second Supplement to the AD India Petition at 2–3 and Attachment 1; *see also* India AD Checklist at the ''Less Than Fair Value Allegation'' section.

For Oman, Petitioners provided ex-factory price quotes for two products. Prices included packing, but petitioners noted no adjustment for packing was needed because the U.S. prices also include packing and because there is no

significant difference in packing between markets. *See* Volume II of the Petitions at Exhibits II–A–1, II–A–2, and II–O–1 and Supplement to the AD Oman Petition at 3; *see also* Oman AD Checklist at the ''Less Than Fair Value Allegation'' section.

For the UAE, the Petitioners provided price quotes for two products. Because the price quotes were on an ex-factory basis, no adjustments were needed. *See* Volume II of the Petitions at II–6 and Exhibits II–A–1, II–A–2, and II–U–1; *see also* UAE AD Checklist at the ''Less Than Fair Value Allegation'' section.

**Fair Value Comparisons**

Based on the data provided by Petitioners, there is reason to believe that imports of certain steel pipe from India, Oman, the UAE, and Vietnam are being, or are likely to be, sold in the United States at less than fair value.

Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, the estimated dumping margins for certain steel pipe from Vietnam range from 20.47 percent to 27.96 percent. *See* Vietnam AD Checklist at ''Estimated Margins'' section; *see also* Supplement to the AD Vietnam Petition at Attachment 5–A.

Based on a comparison of U.S. prices and NV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for certain steel pipe from India range from 22.88 percent to 48.43 percent. *See* India AD Checklist at ''Estimated Margins'' section; *see also* Supplement to the AD India Petition at Attachment 3.

Based on a comparison of U.S. prices and NV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for certain steel pipe from Oman range from 2.89 to 19.33 percent. *See* Oman AD Checklist at ''Estimated Margins'' section; *see also* Supplement to the AD Oman Petition at Attachment 1.

Based on a comparison of U.S. prices and NV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for certain steel pipe from the UAE range from 6.23 percent to 11.71 percent. *See* the UAE AD Checklist at ''Estimated Margins'' section; *see also* Supplement to the AD UAE Petition at Attachment 2.

**Initiation of Antidumping Investigations**

Based upon the examination of the Petitions on certain steel pipe from India, Oman, the UAE, and Vietnam, the Department finds that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of certain steel pipe from India, Oman, the UAE, and Vietnam are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act, unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

**Targeted Dumping Allegations**

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008). The Department stated that ''{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area.'' *See id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in any of these investigations pursuant to section 777A(d)(1)(B) of the Act, such allegations are due no later than 45 days before the scheduled date of the country-specific preliminary determination.

**Respondent Selection**

*India*

At the time of the filing of the petition for this case, there was an existing antidumping duty order on welded steel pipe and tube from India. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India,* 51 FR 17384 (May 12, 1986). Therefore, the scope of this investigation covers merchandise manufactured and/or exported by Zenith Steel Pipes and Industries Ltd., and any successors-in-interest to that company, which is the only company excluded from the 1986 order known to exist.[5] Petitioners have referred to Zenith Steel Pipes and Industries Ltd. and Zenith Birla India Limited interchangeably. Therefore, we intend to issue the questionnaire to both of these named entities, and during the investigation will examine whether Zenith Birla India Limited is properly considered the successor-in-interest to Zenith Steel Pipes and Industries Ltd.

*Oman and the UAE*

Petitioners identified two exporters/producers in Oman and five exporters/producers in the UAE. *See* Volume I of the Petitions, at Exhibit I–4. We are unaware of any other exporters/producers. Following standard practice in antidumping investigations involving market economy countries, the Department intends to select respondents for Oman and the UAE based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the following Harmonized Tariff Schedule of the United States (HTSUS) numbers: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTSUS numbers closely match the subject merchandise, and are those used by Petitioners to calculate aggregate import totals.[6] We intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice and make our decision regarding respondent selection within 20 days of publication of this notice. The Department invites comments regarding the CBP data and respondent selection within seven days of publication of this **Federal Register** notice.

*Vietnam*

For the Vietnam investigation, the Department will request quantity and value information from the ten known exporters/producers identified with complete contact information in the Petitions. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

For antidumping investigations involving NME countries such as Vietnam, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas*

[5] Gujarat Steel Tubes Ltd. was also excluded from the 1986 order, but the company is not known to exist at the time of this initiation. *See* Supplement to the AD India Petition at 2.

[6] *See, e.g.,* Supplement to the AD/CVD Petitions at Attachment 3.

*From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005). On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html*, and a response to the quantity and value questionnaire is due no later than December 6, 2011. Also, the Department will send the quantity and value questionnaire to those Vietnamese companies identified in Volume I of the Petitions, at Exhibit I–4.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

*Separate Rates*

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (April 5, 2005) (Separate Rates and Combination Rates Bulletin), available on the Department's Web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.* Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China,* 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register**. The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the ''Respondent Selection'' section above, the Department requires that Vietnam respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of the publication of this initiation notice in the **Federal Register**.

**Use of Combination Rates in an NME Investigation**

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

*See* Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

**Distribution of Copies of the Petitions**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petitions have been provided to the representatives of the Governments of India, Oman, the UAE, and Vietnam. Because of the large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public versions of the Petitions to the Governments of India, Oman, the UAE, and Vietnam, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, no later than 45 days after the date the Petitions were filed, whether there is a reasonable indication that imports of certain steel pipe from India, Oman, the UAE, and Vietnam are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) (amending 19 CFR 351.303(g)(1) & (2)). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 15, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

**Appendix I**

*Scope of the Oman, the United Arab Emirates, and Vietnam Investigations*

These investigations cover welded carbon-quality steel pipes and tube, of

circular cross-section, with an outside diameter (''O.D.'') not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.,* black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* American Society for Testing and Materials International (''ASTM''), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term ''carbon quality'' includes products in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium;
(xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of these investigations when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.,* polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of these investigations does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;[7] (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.,* outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20);
1.315 inch O.D. and 0.047 inch wall thickness (gage 18);
1.315 inch O.D. and 0.055 inch wall thickness (gage 17);
1.315 inch O.D. and 0.065 inch wall thickness (gage 16);
1.315 inch O.D. and 0.072 inch wall thickness (gage 15);
1.315 inch O.D. and 0.083 inch wall thickness (gage 14);
1.315 inch O.D. and 0.095 inch wall thickness (gage 13);
1.660 inch O.D. and 0.047 inch wall thickness (gage 18);
1.660 inch O.D. and 0.055 inch wall thickness (gage 17);
1.660 inch O.D. and 0.065 inch wall thickness (gage 16);
1.660 inch O.D. and 0.072 inch wall thickness (gage 15);
1.660 inch O.D. and 0.083 inch wall thickness (gage 14);
1.660 inch O.D. and 0.095 inch wall thickness (gage 13);
1.660 inch O.D. and 0.109 inch wall thickness (gage 12);
1.900 inch O.D. and 0.047 inch wall thickness (gage 18);
1.900 inch O.D. and 0.055 inch wall thickness (gage 17);
1.900 inch O.D. and 0.065 inch wall thickness (gage 16);
1.900 inch O.D. and 0.072 inch wall thickness (gage 15);
1.900 inch O.D. and 0.095 inch wall thickness (gage 13);
1.900 inch O.D. and 0.109 inch wall thickness (gage 12);
2.375 inch O.D. and 0.047 inch wall thickness (gage 18);
2.375 inch O.D. and 0.055 inch wall thickness (gage 17);
2.375 inch O.D. and 0.065 inch wall thickness (gage 16);
2.375 inch O.D. and 0.072 inch wall thickness (gage 15);
2.375 inch O.D. and 0.095 inch wall thickness (gage 13);
2.375 inch O.D. and 0.109 inch wall thickness (gage 12);
2.375 inch O.D. and 0.120 inch wall thickness (gage 11);
2.875 inch O.D. and 0.109 inch wall thickness (gage 12);
2.875 inch O.D. and 0.134 inch wall thickness (gage 10);
2.875 inch O.D. and 0.165 inch wall thickness (gage 8);
3.500 inch O.D. and 0.109 inch wall thickness (gage 12);
3.500 inch O.D. and 0.148 inch wall thickness (gage 9);
3.500 inch O.D. and 0.165 inch wall thickness (gage 8);
4.000 inch O.D. and 0.148 inch wall thickness (gage 9);
4.000 inch O.D. and 0.165 inch wall thickness (gage 8);
4.500 inch O.D. and 0.203 inch wall thickness (gage 7).

The pipe subject to these investigations are currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigations.

**Appendix II**

*Scope of the India AD Investigation*

This investigation covers welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (''O.D.'') not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.*, black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.*, American Society for Testing and Materials International (''ASTM''), proprietary, or

[7] Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a ''kit.'' A ''kit'' is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term ''carbon quality'' includes products in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium;
(xiv) 0.15 percent of zirconium.

At the time of the filing of the petition for this case, there was an existing antidumping duty order on welded steel pipe and tube from India. *See Antidumping Duty Order; Certain Welded Carbon Steel Standard Pipes and Tubes from India*, 51 FR 17384 (May 12, 1986). Therefore, the scope of this investigation covers merchandise manufactured and/or exported by Zenith Steel Pipes and Industries Ltd., and any successors-in-interest to that company, which is the only company excluded from the 1986 order known to exist.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of this investigation when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.*, polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of this investigation does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;[8] (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.*, outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20);
1.315 inch O.D. and 0.047 inch wall thickness (gage 18);
1.315 inch O.D. and 0.055 inch wall thickness (gage 17);
1.315 inch O.D. and 0.065 inch wall thickness (gage 16);
1.315 inch O.D. and 0.072 inch wall thickness (gage 15);
1.315 inch O.D. and 0.083 inch wall thickness (gage 14);
1.315 inch O.D. and 0.095 inch wall thickness (gage 13);
1.660 inch O.D. and 0.047 inch wall thickness (gage 18);
1.660 inch O.D. and 0.055 inch wall thickness (gage 17);
1.660 inch O.D. and 0.065 inch wall thickness (gage 16);
1.660 inch O.D. and 0.072 inch wall thickness (gage 15);
1.660 inch O.D. and 0.083 inch wall thickness (gage 14);
1.660 inch O.D. and 0.095 inch wall thickness (gage 13);
1.660 inch O.D. and 0.109 inch wall thickness (gage 12);
1.900 inch O.D. and 0.047 inch wall thickness (gage 18);
1.900 inch O.D. and 0.055 inch wall thickness (gage 17);
1.900 inch O.D. and 0.065 inch wall thickness (gage 16);
1.900 inch O.D. and 0.072 inch wall thickness (gage 15);
1.900 inch O.D. and 0.095 inch wall thickness (gage 13);
1.900 inch O.D. and 0.109 inch wall thickness (gage 12);
2.375 inch O.D. and 0.047 inch wall thickness (gage 18);
2.375 inch O.D. and 0.055 inch wall thickness (gage 17);
2.375 inch O.D. and 0.065 inch wall thickness (gage 16);
2.375 inch O.D. and 0.072 inch wall thickness (gage 15);
2.375 inch O.D. and 0.095 inch wall thickness (gage 13);
2.375 inch O.D. and 0.109 inch wall thickness (gage 12);
2.375 inch O.D. and 0.120 inch wall thickness (gage 11);
2.875 inch O.D. and 0.109 inch wall thickness (gage 12);
2.875 inch O.D. and 0.134 inch wall thickness (gage 10);
2.875 inch O.D. and 0.165 inch wall thickness (gage 8);
3.500 inch O.D. and 0.109 inch wall thickness (gage 12);
3.500 inch O.D. and 0.148 inch wall thickness (gage 9);
3.500 inch O.D. and 0.165 inch wall thickness (gage 8);
4.000 inch O.D. and 0.148 inch wall thickness (gage 9);
4.000 inch O.D. and 0.165 inch wall thickness (gage 8);
4.500 inch O.D. and 0.203 inch wall thickness (gage 7).

The pipe subject to this investigation is currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigation.

[8] Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a ''kit.'' A ''kit'' is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

[FR Doc. 2011–30162 Filed 11–21–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–832]**

### Continuation of Antidumping Duty Order: Pure Magnesium From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') order on pure magnesium from the People's Republic of China (''PRC'') would be likely to lead to continuation or recurrence of dumping and of material injury to an industry in the United States, the Department is publishing this notice of continuation of the AD order.

**DATES:** *Effective Date:* November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brooke Kennedy or Eugene Degnan, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–3818 or (202) 482–0414.

**SUPPLEMENTARY INFORMATION:** On June 1, 2011, the Department initiated the third sunset review of the AD order on pure magnesium from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). *See Initiation of Five-Year ''Sunset'' Review,* 76 FR 31588 (June 1, 2011).

As a result of its review, the Department determined that revocation of the AD order on pure magnesium from the PRC would be likely to lead to a continuation or recurrence of dumping, and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked. *See Pure Magnesium From the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order,* 76 FR 62040 (October 6, 2011).

On October 19, 2011, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the existing AD order on pure magnesium from the PRC would be likely to lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See* USITC Publication 4274 (October 2011), Pure Magnesium from China: Investigation No. 731–TA–696 (Third Review), and *Pure Magnesium From China,* 76 FR 69284 (November 8, 2011).

#### Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off-specification pure'' magnesium).

''Off-specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.[1]

#### Continuation of the Order

As a result of these determinations by the Department and the ITC that revocation of the AD order on pure magnesium would be likely to lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD order on pure magnesium from the PRC. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 14, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2011–30017 Filed 11–21–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[1] The Department has made two scope rulings regarding the subject merchandise. On November 9, 2006, the Department issued a scope ruling, finding that alloy magnesium extrusion billets produced in Canada by Timminco, Ltd. from pure magnesium of Chinese origin are not within the scope of order. *See* Memorandum regarding Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada, dated November 9, 2006. On December 4, 2006, the Department issued a scope ruling, finding that pure magnesium produced in France using pure magnesium from the PRC is within the scope of the order. *See* Memorandum regarding Final Ruling in the Scope Inquiry on Chinese Magnesium Processed in France, dated December 4, 2006.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–533–853, C–523–802, C–520–806, and C–552–810]**

### Circular Welded Carbon-Quality Steel Pipe From India, the Sultanate of Oman, the United Arab Emirates, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* November 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Joshua Morris, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1779.

**SUPPLEMENTARY INFORMATION:**

#### The Petitions

On October 26, 2011, the Department of Commerce (''Department'') received petitions filed in proper form by Allied Tube and Conduit, JMC Steel Group, Wheatland Tube, and United States Steel Corporation (collectively, ''Petitioners''), who are domestic producers of circular welded carbon-quality steel pipe (''certain steel pipe''). *See* Petitions for the Imposition of Antidumping and Countervailing Duties on Circular Welded Carbon-Quality Steel Pipe from India, Oman, the United Arab Emirates, and Vietnam, dated October 26, 2011 (hereinafter, ''the Petitions''). In response to the Department's requests, Petitioners provided timely information supplementing the Petitions on November 7, 2011 (hereinafter, the ''Supplement to the AD/CVD Petitions''), November 9, 2011, and November 10, 2011.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (''the Act''), Petitioners allege that manufacturers, producers, or importers of certain steel pipe from India, the Sultanate of Oman (''Oman''), the United Arab Emirates (''the UAE''), and the Socialist Republic of Vietnam (''Vietnam''), receive countervailable subsidies within the meaning of section 701 of the Act, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing certain steel pipe in the United States.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act, and Petitioners have demonstrated sufficient industry support with respect to the Petitions (*see* ''Determination of Industry Support for the Petitions'' section below).

#### Period of Investigation

The period of investigation is January 1, 2010, through December 31, 2010.

#### Scope of Investigations

The products covered by these investigations are certain steel pipe from India, Oman, the UAE, and Vietnam. For a full description of the scope of the investigations, *see* ''Scope of the Investigations,'' in Appendix I of this notice.

#### Comments on Scope of Investigations

During our review of the Petitions, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). Interested parties that wish to submit comments on the scope should do so by December 5, 2011, twenty calendar days from the signature date of this notice. All comments must be filed on the records of the India, Oman, the UAE, and Vietnam antidumping duty investigations and the India, Oman, the UAE, and Vietnam countervailing duty (''CVD'') investigations. All comments and submissions to the Department must be filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.[1]

#### Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on October 27, 2011, the Department invited representatives of the Indian, Omani, UAE, and Vietnamese governments to consult with respect to the Petitions.

On November 9, 2011, the Indian government asked the Department to postpone initiation of the investigation so that the Department could hold consultations with representatives of the Indian government after November 15, 2011. *See* Letter from Embassy of India to the Department of Commerce (November 9, 2011). On November 10, 2011, the Department advised the Indian government that we were statutorily obligated to initiate an investigation or dismiss the Petitions no later than November 15, 2011, and could only extend this period under section 702(b)(4)(A)(ii) of the Act in circumstances where the Department finds that the Petitions alone do not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product and, as a result, the Department is required to poll or otherwise determine support for the Petitions by the industry. Since the Department was not faced with those circumstances, the Indian government was notified that we would be available to meet with them after initiation. *See* Letter from Nancy Decker to the Embassy of India (November 10, 2011). On November 15, 2011, the Indian government submitted comments objecting to the allegations made by Petitioners and arguing that we should not initiate a CVD investigation. *See* Memorandum to File (November 15, 2011). On November 15, 2011, we sent a response to the Indian government. *See* Letter from Nancy Decker to the Embassy of India (November 15, 2011).

The Omani government was unable to participate in consultations prior to initiation.

Consultations with the Vietnamese and UAE governments were held in Washington, DC, on November 7, 2011, and November 14, 2011, respectively. *See Ex-Parte* Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam (November 15, 2011); and *Ex-Parte* Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on Circular Welded Carbon-Quality Steel Pipe from

[1] *See http://www.gpo.gov/fdsys/pkg/FR–2011–07–06/pdf/2011–16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

the United Arab Emirates (November 14, 2011). All memoranda are on file electronically via IA ACCESS. Access to IA ACCESS is available in the Central Records Unit (''CRU''), Room 7046, of the main Department of Commerce building.

**Determination of Industry Support for the Petitions**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988)), *aff'd* 865 F.2d 240 (Fed. Cir. 1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that certain steel pipe constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from India (''India CVD Checklist''), Countervailing Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from Oman (''Oman CVD Checklist''), Countervailing Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates (''UAE CVD Checklist''), and Countervailing Duty Investigation Initiation Checklist: Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam (''Vietnam CVD Checklist'') at Attachment II, Analysis of Industry Support for the Petitions Covering Circular Welded Carbon-Quality Steel Pipe, on file electronically in the CRU via IA ACCESS.

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the ''Scope of Investigations,'' in Appendix I of this notice. To establish industry support, Petitioners provided their shipments of the domestic like product in 2010, and compared their shipments to the estimated total shipments of the domestic like product for the entire domestic industry. Because total industry production data for the domestic like product for 2010 is not reasonably available and Petitioners have established that shipments are a reasonable proxy for production data, we have relied upon the shipment data provided by Petitioners for purposes of measuring industry support. For further discussion, *see* India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and Vietnam CVD Checklist, at Attachment II.

Our review of the data provided in the Petitions, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petitions established support from domestic producers accounting for more than 50 percent of the total shipments [2] of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* Section 702(c)(4)(D) of the Act and India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and Vietnam CVD Checklist, at Attachment II. Second, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers who support the Petitions account for at least 25 percent of the total shipments of the domestic like product. *See* India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and Vietnam CVD Checklist, at Attachment II. Finally, the domestic producers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers who support the Petitions account for more than 50 percent of the shipments of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions. *See* India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and Vietnam CVD Checklist, at Attachment II. Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and Vietnam CVD Checklist, at Attachment II.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the countervailing duty investigations they are requesting the Department initiate. *See* India CVD Checklist, Oman CVD Checklist, UAE CVD Checklist, and

[2] As mentioned above, Petitioners have established that shipments are a reasonable proxy for production data. Section 351.203(e)(1) of the Department's regulations states ''production levels may be established by reference to alternative data that the Secretary determines to be indicative of production levels.''

Vietnam CVD Checklist, at Attachment II.

*Injury Test*

Because India, Oman, the UAE, and Vietnam all are a ''Subsidies Agreement country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from India, Oman, the UAE, and Vietnam materially injure, or threaten material injury to, a U.S. industry.

*Allegations and Evidence of Material Injury and Causation*

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; reduced production, shipments, capacity, and capacity utilization; reduced employment, hours worked, and wages paid; underselling and price depression or suppression; decline in financial performance; lost sales and revenue; and increase in the volume of imports and import penetration despite overall declining demand. *See* India CVD Initiation Checklist, Oman CVD Initiation Checklist, UAE CVD Initiation Checklist, and Vietnam CVD Initiation Checklist, at ''Analysis of Allegations and Evidence of Material Injury and Causation for the Petitions Covering Circular Welded Carbon-Quality Steel Pipe from India, Oman, the UAE, and Vietnam'' in Attachment III. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* India CVD Initiation Checklist, Oman CVD Initiation Checklist, UAE CVD Initiation Checklist, and Vietnam CVD Initiation Checklist, at Attachment III.

*Initiation of Countervailing Duty Investigations*

Section 702(b) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to Petitioner(s) supporting the allegations. The Department has examined the Petitions on certain steel pipe from India, Oman, the UAE, and Vietnam and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating CVD investigations to determine whether manufacturers, producers, or exporters of certain steel pipe in India, Oman, the UAE, and Vietnam receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* India CVD Initiation Checklist, Oman CVD Initiation Checklist, UAE CVD Initiation Checklist, and Vietnam CVD Initiation Checklist.

*I. India*

We are including in our investigation the following programs alleged in the Petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in India:

A. Export Oriented Unit Schemes
  1. Duty-free import of all types of goods, including capital goods and raw materials
  2. Reimbursement of Central Sales Tax (''CST'') paid on goods manufactured in India
  3. Duty drawback on fuel procured from domestic oil companies
  4. Exemption from income tax under Section 10A and 10B of Income Tax Act
  5. Exemption from payment of Central Excise Duty on goods manufactured in India and procured from a Domestic Tariff Area
  6. Reimbursement of CST on goods manufactured in India and procured from a Domestic Tariff Area
B. Export Promotion Capital Goods Scheme
C. Duty Exemption/Remission Schemes
D. Pre-shipment and Post-shipment Export Financing
E. Market Development Assistance
F. Market Access Initiative
G. Government of India Loan Guarantees
H. Status Certificate Program
I. Steel Development Fund Loans
J. Research and Technology Scheme Under Empowered Committee Mechanism with Steel Development Fund Support
K. Special Economic Zones (''SEZ'') Programs
  1. Duty-Free Importation of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
  2. Exemption from Payment of CST on Purchases of Capital Goods and Raw Materials, Components, Consumables, Intermediates, Spare Parts and Packing Material
  3. Exemption from Electricity Duty and Cess thereon on the Sale or Supply to the SEZ Unit
  4. SEZ Income Tax Exemption Scheme (Section 10A)
  5A. Discounted Land and Related Fees in an SEZ
  5B. Land Provided at Less Than Adequate Remuneration in an SEZ
L. Input Programs
  1. Provision of Hot-Rolled Steel by the Steel Authority of India For Less Than Adequate Remuneration (''LTAR'')
  2. Provision of Captive Mining Rights
  3. Captive Mining Rights of Coal
  4. Provision of High-Grade Ore for LTAR
M. State Government of Maharashtra (''SGOM'') Programs
  1. Sales Tax Program
  2. Value-Added Tax Refunds under SGOM Package Scheme
  3. Electricity Duty Scheme under Package Scheme Incentives 1993
  4. Octroi Refunds
  5. Octroi Loan Guarantees
  6. Infrastructure Assistance for Mega Projects
  7. Provision of Land for LTAR
  8. Investment Subsidies

For further information explaining why the Department is investigating these programs, *see* India CVD Initiation Checklist.

*II. Oman*

We are including in our investigation the following programs alleged in the Petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in Oman:

A. Tariff Exemptions on Imported Equipment, Machinery, Raw Materials and Packaging Materials
B. Government Provision of Goods and Services for LTAR
  1. Land and Buildings for LTAR
  2. Electricity, Water, and Natural Gas for LTAR
C. Preferential Loans
  1. Soft Loans for Industrial Projects
  2. Post-Shipment Financing Loans
  3. Pre-Shipment Export Credit Guarantees

For further information explaining why the Department is investigating these programs, *see* Oman CVD Initiation Checklist.

We are not including in our investigation the following programs

alleged to benefit producers and exporters of the subject merchandise in Oman:

A. Profit/Income Tax Exemption
B. Export Credit Insurance

For further information explaining why the Department is not investigating these programs, *see* Oman CVD Initiation Checklist.

*III. UAE*

We are including in our investigation the following programs alleged in the Petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in the UAE:

A. Profit Tax Exemptions
B. Tariff Exemptions on Imported Equipment, Spare Parts, and Building Materials
C. Government Provision of Goods and Services for LTAR
  1. Electricity for LTAR
  2. Water for LTAR
  3. Land and/or Buildings for LTAR
D. Preferential Lending
  1. Preferential Export Lending
  2. Dubai Commodity Receipts

For further information explaining why the Department is investigating these programs, *see* UAE CVD Initiation Checklist.

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in the UAE:

A. Gas for LTAR

For further information explaining why the Department is not investigating this program, *see* UAE CVD Initiation Checklist.

*IV. Vietnam*

We are including in our investigation the following programs alleged in the Petitions to have provided countervailable subsidies to producers and exporters of the subject merchandise in Vietnam:

A. Policy Lending
  1. Preferential Lending for Exporters
  2. Preferential Lending to the Steel Industry
B. Government Provision of Goods and Services for LTAR
  1. Land Rent Reduction or Exemption for Exporters
  2. Land Rent Reduction or Exemption for Foreign-Invested Enterprises (''FIEs'')
  3. Land Preferences for Enterprises in Encouraged Industries or Industrial Zones
  4. Provision of Water LTAR in Industrial Zones
C. Grant Programs
  1. Export Promotion Program
  2. New Product Development Program
D. Tax Programs
  1. Import Duty Exemptions for Imported Raw Materials for Exported Goods
  2. Income Tax Preferences for Encouraged Industries
  3. Income Tax Preferences for FIEs
  4. Exemption of Import Duties on Imports of Fixed Assets, Spare Parts and Accessories for Industrial Zones
  5. Income Tax Preferences for Enterprises in Industrial Zones
  6. Tax Refund for Reinvestment by FIEs
  7. Import Duty Preferences for FIEs
  8. Duty Exemptions on Goods for the Creation of Fixed Assets for Encouraged Projects
  9. Income Tax Preferences for Exporters

For further information explaining why the Department is investigating these programs, *see* Vietnam CVD Initiation Checklist.

**Respondent Selection**

For these investigations, the Department expects to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of investigation under the following Harmonized Tariff Schedule of the United States (''HTSUS'') numbers: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. These HTSUS numbers closely match the subject merchandise, and are those used by Petitioners to calculate aggregate import totals.[3] We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties with access to information protected by APO within five days of publication of this **Federal Register** notice. Interested parties may submit comments regarding the CBP data and respondent selection within seven calendar days of publication of this notice. Comments should be filed electronically using IA ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by the time and date noted above. Documents excepted from the electronic submission requirements must be filed manually (i.e., in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo.*

**Distribution of Copies of the Petitions**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to representatives of the Governments of India, Oman, the UAE, and Vietnam. Because of the large number of producers/exporters identified in the Petitions, the Department considers the service of the public version of the Petitions to the foreign producers/exporters satisfied by the delivery of the public versions of the Petitions to the Governments of India, Oman, the UAE, and Vietnam, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, no later than 45 days after the date the Petitions were filed, whether there is a reasonable indication that imports of certain steel pipe from India, Oman, the UAE, and Vietnam are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination with respect to any country will result in the investigation being terminated for that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (e.g., the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

[3] *See, e.g.,* Supplement to the AD/CVD Petitions at Attachment 3.

Any party submitting factual information in a CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD/CVD proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*) (amending 19 CFR 351.303(g)(1) and (2)). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: November 15, 2011.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

*Scope of the Investigations*

These investigations cover welded carbon-quality steel pipes and tube, of circular cross-section, with an outside diameter (''O.D.'') not more than 16 inches (406.4 mm), regardless of wall thickness, surface finish (*e.g.,* black, galvanized, or painted), end finish (plain end, beveled end, grooved, threaded, or threaded and coupled), or industry specification (*e.g.,* American Society for Testing and Materials International (''ASTM''), proprietary, or other) generally known as standard pipe, fence pipe and tube, sprinkler pipe, and structural pipe (although subject product may also be referred to as mechanical tubing). Specifically, the term ''carbon quality'' includes products in which: (a) Iron predominates, by weight, over each of the other contained elements; (b) the carbon content is 2 percent or less, by weight; and (c) none of the elements listed below exceeds the quantity, by weight, as indicated:

(i) 1.80 percent of manganese;
(ii) 2.25 percent of silicon;
(iii) 1.00 percent of copper;
(iv) 0.50 percent of aluminum;
(v) 1.25 percent of chromium;
(vi) 0.30 percent of cobalt;
(vii) 0.40 percent of lead;
(viii) 1.25 percent of nickel;
(ix) 0.30 percent of tungsten;
(x) 0.15 percent of molybdenum;
(xi) 0.10 percent of niobium;
(xii) 0.41 percent of titanium;
(xiii) 0.15 percent of vanadium;
(xiv) 0.15 percent of zirconium.

Subject pipe is ordinarily made to ASTM specifications A53, A135, and A795, but can also be made to other specifications. Structural pipe is made primarily to ASTM specifications A252 and A500. Standard and structural pipe may also be produced to proprietary specifications rather than to industry specifications. Fence tubing is included in the scope regardless of certification to a specification listed in the exclusions below, and can also be made to the ASTM A513 specification. Sprinkler pipe is designed for sprinkler fire suppression systems and may be made to industry specifications such as ASTM A53 or to proprietary specifications. These products are generally made to standard O.D. and wall thickness combinations. Pipe multi-stenciled to a standard and/or structural specification and to other specifications, such as American Petroleum Institute (''API'') API–5L specification, is also covered by the scope of these investigations when it meets the physical description set forth above, and also has one or more of the following characteristics: is 32 feet in length or less; is less than 2.0 inches (50mm) in outside diameter; has a galvanized and/or painted (*e.g.,* polyester coated) surface finish; or has a threaded and/or coupled end finish.

The scope of these investigations does not include: (a) Pipe suitable for use in boilers, superheaters, heat exchangers, refining furnaces and feedwater heaters, whether or not cold drawn; (b) finished electrical conduit; (c) finished scaffolding;[4] (d) tube and pipe hollows for redrawing; (e) oil country tubular goods produced to API specifications; (f) line pipe produced to only API specifications; and (g) mechanical tubing, whether or not cold-drawn. However, products certified to ASTM mechanical tubing specifications are not excluded as mechanical tubing if they otherwise meet the standard sizes (*e.g.,* outside diameter and wall thickness) of standard, structural, fence and sprinkler pipe. Also, products made to the following outside diameter and wall thickness combinations, which are recognized by the industry as typical for fence tubing, would not be excluded from the scope based solely on their being certified to ASTM mechanical tubing specifications:

1.315 inch O.D. and 0.035 inch wall thickness (gage 20)
1.315 inch O.D. and 0.047 inch wall thickness (gage 18)
1.315 inch O.D. and 0.055 inch wall thickness (gage 17)
1.315 inch O.D. and 0.065 inch wall thickness (gage 16)
1.315 inch O.D. and 0.072 inch wall thickness (gage 15)
1.315 inch O.D. and 0.083 inch wall thickness (gage 14)
1.315 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.047 inch wall thickness (gage 18)
1.660 inch O.D. and 0.055 inch wall thickness (gage 17)
1.660 inch O.D. and 0.065 inch wall thickness (gage 16)
1.660 inch O.D. and 0.072 inch wall thickness (gage 15)
1.660 inch O.D. and 0.083 inch wall thickness (gage 14)
1.660 inch O.D. and 0.095 inch wall thickness (gage 13)
1.660 inch O.D. and 0.109 inch wall thickness (gage 12)
1.900 inch O.D. and 0.047 inch wall thickness (gage 18)
1.900 inch O.D. and 0.055 inch wall thickness (gage 17)
1.900 inch O.D. and 0.065 inch wall thickness (gage 16)
1.900 inch O.D. and 0.072 inch wall thickness (gage 15)
1.900 inch O.D. and 0.095 inch wall thickness (gage 13)
1.900 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.047 inch wall thickness (gage 18)
2.375 inch O.D. and 0.055 inch wall thickness (gage 17)
2.375 inch O.D. and 0.065 inch wall thickness (gage 16)
2.375 inch O.D. and 0.072 inch wall thickness (gage 15)
2.375 inch O.D. and 0.095 inch wall thickness (gage 13)
2.375 inch O.D. and 0.109 inch wall thickness (gage 12)
2.375 inch O.D. and 0.120 inch wall thickness (gage 11)
2.875 inch O.D. and 0.109 inch wall thickness (gage 12)
2.875 inch O.D. and 0.134 inch wall thickness (gage 10)
2.875 inch O.D. and 0.165 inch wall thickness (gage 8)
3.500 inch O.D. and 0.109 inch wall thickness (gage 12)
3.500 inch O.D. and 0.148 inch wall thickness (gage 9)
3.500 inch O.D. and 0.165 inch wall thickness (gage 8)
4.000 inch O.D. and 0.148 inch wall thickness (gage 9)

[4] Finished scaffolding is defined as component parts of a final, finished scaffolding that enters the United States unassembled as a ''kit.'' A ''kit'' is understood to mean a packaged combination of component parts that contain, at the time of importation, all the necessary component parts to fully assemble a final, finished scaffolding.

4.000 inch O.D. and 0.165 inch wall thickness (gage 8)
4.500 inch O.D. and 0.203 inch wall thickness (gage 7)

The pipe subject to these investigations are currently classifiable in Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 7306.19.1010, 7306.19.1050, 7306.19.5110, 7306.19.5150, 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, 7306.30.5090, 7306.50.1000, 7306.50.5050, and 7306.50.5070. However, the product description, and not the HTSUS classification, is dispositive of whether the merchandise imported into the United States falls within the scope of the investigations.

[FR Doc. 2011–30158 Filed 11–21–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XP18**

### Marine Mammals; File No. 14334

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

**ACTION:** Notice; receipt of application for permit amendment.

**SUMMARY:** Notice is hereby given that the Alaska SeaLife Center (ASLC), 301 Railway Avenue, Seward, AK 99664 (Dr. Ian Dutton, Responsible Party), has applied for an amendment to Scientific Research Permit No. 14334–01.

**DATES:** Written, telefaxed, or emailed comments must be received on or before December 22, 2011.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14334 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; *phone* (301) 427–8401; *fax* (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; *phone* (907) 586–7221; *fax* (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Amy Sloan or Tammy Adams, (301) 713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 14334–01 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 14334–01, issued on March 21, 2011 (76 FR 18724), authorizes the permit holder to investigate reproductive physiology of adult Steller sea lions (*Eumetopias jubatus;* permanently captive, eastern stock) and survival, growth, and physiology of captive-bred offspring. They may also deploy biotelemetry instruments on the captives to develop and validate methods for monitoring wild Steller sea lions. The permit authorizes four mortalities of captive animals over the duration of the permit and two mortalities have occurred to date. The permit expires on August 31, 2014.

The permit holder is requesting the permit be amended to allow for the following: (1) The addition of a respiratory stimulant drug administered prior to anesthesia (in addition to during anesthesia, as currently permitted) to mitigate breath holding and decreased heart rate; (2) an increase in the number of pups/juveniles authorized for research from six to nine, to allow for an increased sample size for the permitted research due to acquisition of three new females in the breeding program; (3) the use of additional fecal markers (berries, rice, food coloring, and sesame seeds) to provide individually identifiable fecal samples for hormone analysis; (4) administration of deuterium oxide via a gastric tube followed by serial blood sampling to assess energy transfer from mother to pup during nursing; (5) the addition of a second male (currently a juvenile at ASLC) for breeding purposes; and (6) two additional mortalities of captive sea lions for the duration of the permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 14, 2011.

**P. Michael Payne,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–30154 Filed 11–21–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).

*Title:* Fastener Quality Act Insignia Recordal Process.

*Form Number(s):* PTO–1611.

*Agency Approval Number:* 0651–0028.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 24 hours annually.

*Number of Respondents:* 95 responses per year.

*Average Hours per Response:* The USPTO expects that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, create the document, and submit the completed request.

*Needs and Uses:* Under Section 5 of the Fastener Quality Act of 1999 (FQA), 15 U.S.C. 5401 *et seq.,* certain industrial fasteners must bear an insignia identifying the manufacturer. It is also mandatory for manufacturers of fasteners covered by the FQA to submit an application to the USPTO for recordal of the insignia on the Fastener Insignia Register.

The procedures for the recordal of fastener insignia under the FQA are set forth in 15 CFR 280.300 *et seq.* The purpose of requiring both the insignia and the recordation is to ensure that certain fasteners can be traced to their manufacturers and to protect against the sale of mismarked, misrepresented, or counterfeit fasteners.

The public uses this information collection to comply with the insignia recordal provisions of the FQA. An applicant may choose to use either the Application for Recordal of Insignia or Renewal/Reactivation of Recordal Under the Fastener Quality Act (PTO–1611) or prepare requests for recordal using a separate document that includes the information required by 15 CFR 280.310(b)(1)–(8).

The USPTO uses the information in this collection to record, renew, or reactivate insignias under the FAQ and to maintain the Fastener Insignia Register, which is open to public inspection. The public may download the Fastener Insignia Register from the USPTO Web site.

*Affected Public:* Businesses or other for-profits.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Nicholas A. Fraser, email: *Nicholas_A._Fraser@omb.eop.gov.*

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov.*

Paper copies can be obtained by:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0028 copy request'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 22, 2011 to Nicholas A. Fraser, OMB Desk Officer, via email to *Nicholas_A._Fraser@omb.eop.gov,* or by fax to (202) 395–5167, marked to the attention of Nicholas A. Fraser.

Dated: November 17, 2011.

**Susan K. Fawcett,**

*Records Officer, USPTO, Office of the Chief Information Officer.*

[FR Doc. 2011–30063 Filed 11–21–11; 8:45 am]

BILLING CODE 3510–16–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, December 9, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–30261 Filed 11–18–11; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, December 16, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–30262 Filed 11–18–11; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, December 2, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–30264 Filed 11–18–11; 4:15 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, December 2, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–30265 Filed 11–18–11; 2:37 pm]

BILLING CODE 6351–01–P

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** 10 a.m., Friday, December 23, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance and Enforcement Matters. In the event

that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–30263 Filed 11–18–11; 4:15 pm]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 11–36]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–36 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON VA 22202-5408

NOV 08 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-36, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Malaysia for defense articles and services estimated to cost $52 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided under Separate Cover)

**Transmittal No. 11–36**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended*

(i) *Prospective Purchaser:* Malaysia.

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* .. | $ 27 million |
| Other ..... | $ 25 million |
| TOTAL ..... | $ 52 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 20 AIM–9X–2 SIDEWINDER Block II All-Up-Round Missiles, 8 CATM–9X–2 Captive Air Training Missiles, 4 CATM–9X–2 Block II Missile Guidance Units, 2 AIM–9X–2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and

* as defined in Section 47(6) of the Arms Export Control Act.

training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support.

(iv) *Military Department:* Navy (AAD).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Annex attached.

(viii) *Date Report Delivered to Congress:* 8 November 2011.

*Policy Justification*

Malaysia—AIM–9X–2 SIDEWINDER Missiles

The Government of Malaysia has requested a possible sale of 20 AIM–9X–2 SIDEWINDER Block II All-Up-Round Missiles, 8 CATM–9X–2 Captive Air Training Missiles, 4 CATM–9X–2 Block II Missile Guidance Units, 2 AIM–9X–2 Block II Tactical Guidance Units, 2 Dummy Air Training Missiles, containers, missile support and test equipment, provisioning, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related logistics support. The estimated cost is $52 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in East Asia.

The Royal Malaysian Air Force is modernizing its fighter aircraft to better support its own air defense needs. The proposed sale of AIM–9X–2 missiles will enhance Malaysia's interoperability with the U.S. and among other South East Asian nations, making it a more valuable partner in an increasingly important area of the world.

The proposed sale of this weapon system will not alter the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company in Tucson, Arizona. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale will require travel of U.S. Government or contractor representatives to Malaysia on a temporary basis for program technical support and management oversight.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

**Transmittal No. 11–36**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act*

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. The AIM–9X–2 SIDEWINDER Block II Missile represents a substantial increase in missile acquisition and kinematics performance over the AIM–9M and replaces the AIM–9X–1 Block I missile configuration. The missile includes a high off bore-sight seeker, enhanced countermeasure rejection capability, low drag/high angle of attack airframe and the ability to integrate the Helmet Mounted Cueing System. The software algorithms are the most sensitive portion of the AIM–9X–2 missile. The software continues to be modified via a pre-planned product improvement ($P^3I$) program in order to improve its counter-countermeasures capabilities. No software source code or algorithms will be released.

2. The AIM–9X–2 will result in the transfer of sensitive technology and information. The equipment, hardware, and documentation are classified Confidential. The software and operational performance are classified Secret. The seeker/guidance control section and the target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documentation that are necessary or support operational use and organizational management are classified up to Secret. Performance and operating logic of the counter-countermeasures circuits are classified Secret. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters and similar critical information.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2011–30092 Filed 11–21–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 11–40]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–40 with attached transmittal and policy justification.

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON VA 22202-5408

NOV 08 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-40, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Peru for defense articles and services estimated to cost $74 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

**Transmittal No. 11–40**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended*

(i) *Prospective Purchaser:* Peru.

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* .. | $ 0 million |
| Other ..... | $74 million |
| TOTAL ..... | $74 million |

*as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* modification and refurbishment of two C–130E aircraft being provided as Excess Defense Articles (grant EDA notification submitted separately) to include: aircraft ferry, spare and repair parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (SLC).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 8 November 2011.

*Policy Justification*

Peru—Refurbishment of Two C–130E Aircraft

The Government of Peru has requested a possible sale for the modification and refurbishment of two C–130E aircraft being provided as Excess Defense Articles (grant EDA notification submitted separately) to include: aircraft ferry, spare and repair parts, support equipment, personnel training and training equipment, publications and technical data, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $74 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, a close partner in countering illicit drug trafficking, a force for economic progress in South America, and a proponent of hemispheric cooperation.

This proposed sale will enable the Peruvian Air Force to modernize its aging aircraft and enhance its capacity to support humanitarian efforts in the region. Peru occupies a strategic location in South America, and the sale of refurbishment support for its EDA grant C–130 aircraft will improve Peru's efforts in conducting maritime interdiction operations, improve its ability to execute counter-narcotics and counterterrorism capabilities, and ensure Peru's overall ability to maintain the integrity of its borders. Additionally, this transfer will enhance the Peruvian Military's ability to support Humanitarian Assistance and Disaster Relief (HA/DR) efforts. Peru, which already has C–130 and L–100 aircraft in its inventory, will have no difficulty absorbing these additional aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor for the refurbishment is undetermined at this time. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Peru.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–30093 Filed 11–21–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal Nos. 11–41]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 11–41 with attached transmittal and policy justification.

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 08 2011

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 11-41, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $100 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

**Transmittal No. 11–41**

*Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended*

(i) *Prospective Purchaser:* Kuwait.

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* .. | $ 0 million |
| Other ..... | $ 100 million |
| TOTAL ..... | $ 100 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* continuing logistics support, contractor maintenance, and technical services in support of the F/A–18 aircraft to include Contractor Engineering Technical Services/Contractor Maintenance Services, Hush House Maintenance Support Services, and Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support.

(iv) *Military Department:* Navy (GGT).

(v) *Prior Related Cases, if any:* numerous cases dating back to 1995.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

* as defined in Section 47(6) of the Arms Export Control Act.

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 8 November 2011.

*Policy Justification*

Kuwait—Technical/Logistics Support for F/A–18 Aircraft

The Government of Kuwait has requested a possible sale of continuing logistics support, contractor maintenance, and technical services in support of the F/A–18 aircraft to include Contractor Engineering Technical Services/Contractor Maintenance Services, Hush House Maintenance Support Services, and Liaison Office Support Services, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $100 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The Government of Kuwait needs this logistics support, contractor maintenance, and technical services to maintain the operational capabilities of its aircraft.

The contractor maintenance and training technical services will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in St. Louis, Missouri; Kay and Associates in Buffalo Grove, Illinois; Industrial Acoustics Company in Winchester, United Kingdom; and General Dynamics in Fairfax, Virginia. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2011–30094 Filed 11–21–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Audit Advisory Committee (DAAC); Notice of Meeting

**AGENCY:** Under Secretary of Defense (Comptroller), Department of Defense (DoD).

**SUMMARY:** Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Audit Advisory Committee (DAAC) will be held.

**DATES:** Friday, December 9, 2011 beginning at 2 p.m. and ending at 4 p.m.

**ADDRESSES:** Pentagon, Room 3E754, Washington, DC (escort required, see **SUPPLEMENTARY INFORMATION**).

**FOR FURTHER INFORMATION CONTACT:** The Committee's Designated Federal Officer (DFO) is Sandra Gregory, Office of the Under Secretary of Defense (Comptroller) (OUSD(C)), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *sandra.gregory@osd.mil*, (703) 614–3310. For meeting information please contact Christopher Hamrick, OUSD(C), 1100 Defense Pentagon, Room 3D150, Washington, DC 20301–1100, *Christopher.Hamrick@osd.mil*, (703) 614–4819.

**SUPPLEMENTARY INFORMATION:**

**(a) Purpose**

The mission of the DAAC is to provide the Secretary of Defense, through the Under Secretary of Defense (Comptroller)/Chief Financial Officer, independent advice and recommendations on DoD financial management to include financial reporting processes, systems of internal controls, audit processes, and processes for monitoring compliance with relevant laws and regulations.

**(b) Agenda**

2 p.m. Opening Remarks
2:15 p.m. Comments from Under Secretary of Defense (Comptroller)
2:45 p.m. 13 Oct Secretary of Defense Memorandum
3:15 p.m. Overview of the November Financial Improvement and Audit Readiness Plan Status Report
3:30 p.m. Proposed DoD Financial Management Professional Certification
3:45 p.m. Conclusion

**(c) Accessibility to the Meeting**

Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is on a first-come basis. Members of the public who wish to attend the meeting must contact Mr. Christopher Hamrick at the number listed in this **Federal Register** notice no later than noon on Friday, December 2, 2011, to arrange a Pentagon escort. Public attendees are required to arrive at the Pentagon Metro Entrance by 1 p.m. and complete security screening by 1:15 p.m. Security screening requires two forms of identification: (1) A government-issued photo I.D., and (2) any type of secondary I.D. which verifies the individual's name (i.e. debit card, credit card, work badge, social security card). Special Accommodations: Individuals requiring special accommodation to access the public meeting should contact Mr. Hamrick at least five business days prior to the meeting to ensure appropriate arrangements can be made.

**(d) Procedures for Providing Written Comments**

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Committee about its mission and topics pertaining to this public session.

Written comments are accepted until the date of the meeting, however, written comments should be received by the Designated Federal Officer at least five business days prior to the meeting date so that the comments may be made available to the Committee members for their consideration prior to the meeting. Written comments should be submitted to the Designated Federal Officer listed in this notice. Email submissions should be in one of the following formats (Adobe Acrobat, WordPerfect, or Word format).

Please note: since the committee operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection, up to and including being posted on the OUSD(C) Web site.

Dated: November 17, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–30130 Filed 11–21–11; 8:45 am]

BILLING CODE 5001–06–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare an Environmental Impact Statement for the Proposed Westbrook Project, Corps Permit Application Number SPK–2005–00938

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Sacramento District, (Corps) received a Department of the Army permit application from Westpark S.V. 400, LLC (Applicant) to fill approximately 9.6 acres of waters of the United States to construct the proposed Westbrook Project in Placer County, CA, in June 2011. The Corps, as the lead agency responsible for compliance with the National Environmental Policy Act (NEPA), determined that the proposed project may result in significant impacts to the environment, and that the preparation of an Environmental Impact Statement (EIS) is required.

The Applicant proposes to implement a moderate scale, mixed-use, mixed-density master planned community. The Westbrook Project, as proposed, would include a mixture of land uses, including new residential neighborhoods, elementary school, parks and several neighborhood serving retail centers. The Westbrook Project would involve approximately 146 acres of low-density residential, 84 acres of medium-density residential 28 acres high-density residential and 43 acres of commercial land uses. Other proposed land uses include a 10-acre elementary school site, approximately 16 acres for three neighborhood parks, and approximately 37 acres of open space for the preservation of natural resources areas.

The proposed project site is approximately 400 acres and contains approximately 13 acres of waters of the United States. The project, as proposed, would result in direct impacts to approximately 9.6 acres of waters of the United States. These acreages do not include indirect impacts from the proposed action or impacts anticipated to result from offsite infrastructure that may be determined to be required as part of the project through the Environmental Impact Statement (EIS) process.

**ADDRESSES:** To submit comments on this notice or for questions about the proposed action and the Draft EIS, please contact James T. Robb, 650 Capitol Mall, Room 5–200, Sacramento, CA 95814. Please refer to Identification Number SPK–2005–00938 in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Mr. James T. Robb, (916) 557–7610, *email: DLL–CESPK–RD–EIS–Comments@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to submit written comments on the permit application on or before November 14, 2011. Scoping comments should be submitted within the next 45 days, but may be submitted at any time prior to publication of the Draft EIS.

The USACE will evaluate alternatives including the no action alternative, the proposed action alternative, and other on-site and off-site alternatives. No project alternatives have been defined to date. The proposed project and the alternatives to its proposed size, design, and location will be developed through the EIS process.

The proposed project would result in direct impacts to approximately 9.6 acres of waters of the United States and would avoid approximately 2.9 acres of these waters of the United States. Waters of the U.S. on-site include two intermittent streams, seasonal wetlands, wetland swales, and vernal pools.

The proposed site for the Westbrook community is in unincorporated Placer County, CA, immediately west of the City of Roseville's existing city limits. The proposed project site is approximately 6 miles west of Interstate 80 and State Route 65, 10 miles northeast of the City of Sacramento, 10 miles east of State Route 99, 5 miles west of downtown Roseville, and 4 miles east of the Sutter County line. The proposed project site is bordered on the west by Fiddyment Road and is approximately 1.2 miles north of Baseline Road. The property to the north was previously authorized for development under permit SPK–2002–00666 (Westpark/Fiddyment Ranch) or is under review in the case of Creekview (SPK–2006–00650). The property to the south, directly adjacent to Baseline Road, is currently under review (Sierra Vista Specific Plan, SPK–2006–01050 and Placer Vineyards, SPK–1999–00737). The proposed project site was once a part of the Sierra Vista Specific Plan area, but the landowners at the time withdrew their application for a Section 404 permit and the area was dropped from analysis under the Sierra Vista EIS in 2008. A new permit application was received for the proposed Westbrook project on June 9, 2011.

The Corps' public involvement program includes several opportunities to provide oral and written comments on the Westbrook project through the EIS drafting process. Affected federal, state, and local agencies, Indian tribes, and other interested private organizations and parties are invited to participate. Significant issues to be analyzed in depth in the EIS include impacts to waters of the United States, including vernal pools and other wetlands; agricultural resources; cultural resources; threatened and endangered species; transportation; air quality; surface water and groundwater; hydrology and water quality; socioeconomic effects; and aesthetics.

The applicant reports that the project area supports suitable habitat for certain federally listed branchiopods, including the threatened vernal pool fairy shrimp (*Branchinecta lynchi*) and endangered Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*). The suitable habitat for branchiopods within the project area includes vernal pools and depressional seasonal wetlands (including depressional areas within wetland swales).

The Applicant reports that there are historic properties within the Westbrook project area. The Corps will review this information, determine eligibility and initiate the appropriate state and tribal consultations as required under Section 106 of the NHPA as outlined in the Corps' Interim Guidance to 33 CFR part 325 Appendix C.

It is anticipated that the Draft EIS will be made available to the public between November 2012 and May 2013.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2011–30088 Filed 11–21–11; 8:45 am]

BILLING CODE 3720–58–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 January 23, 2012.

**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: November 17, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Special Education and Rehabilitative Services

*Type of Review:* Revision.

*Title of Collection:* Annual Vocational Rehabilitation Program/Cost Report.

*OMB Control Number:* 1820–0017.

*Agency Form Number(s):* RSA–2.

*Frequency of Responses:* Annually.

*Affected Public:* Business or other for-profit; State, Local or Tribal Government.

*Total Estimated Number of Annual Responses:* 80.

*Total Estimated Annual Burden Hours:* 320.

*Abstract:* The Rehabilitative Service Administration (RSA)–2 collects expenditure and service data from State vocational rehabilitation agencies under Title I of the Rehabilitation Act of 1973, as amended in order for the RSA to manage, administer, and evaluate vocational rehabilitation programs.

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 4753. 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. 2011–30132 Filed 11–21–11; 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, 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 January 23, 2012.

**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: November 17, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Elementary and Secondary Education

*Type of Review:* Extension.

*Title of Collection:* Impact Aid Application for Section 8002 Assistance.

*OMB Control Number:* 1810–0036.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Total Estimated Number of Annual Responses:* 250.

*Total Estimated Annual Burden Hours:* 1,625.

*Abstract:* The U.S. Department of Education (ED) is requesting approval for the Application for Assistance under Section 8002 of Title VIII of the Elementary and Secondary Education Act. This application is for a grant

program otherwise known as Impact Aid Payments for Federal Property. Local Educational Agencies that have lost taxable property due to Federal activities request financial assistance by completing an annual application. Regulations for Section 8002 of the Impact Aid Program are found at 34 CFR 222, Subpart B. ED is requesting renewal of its three-year clearance under the same collection number.

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 4726. 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. 2011–30136 Filed 11–21–11; 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 January 23, 2012.

**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: November 17, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Extension.

*Title of Collection:* Teacher Education Assistance for College and Higher Education Grant (TEACH) Eligibility Regulations.

*OMB Control Number:* 1845–0084.

*Agency Form Number(s):* N/A.

*Total Estimated Number of Annual Responses:* 233,276.

*Total Estimated Annual Burden Hours:* 32,739.

*Abstract:* The Teacher Education Assistance for College and Higher Education (TEACH) Grant program is a non-need-based grant program that provides up to $4,000 per year to students who are enrolled in an eligible program and who agree to teach in a high-need field, at a low-income elementary or secondary school for at least four years within eight years of completing the program for which the TEACH Grant was awarded. The TEACH Grant program regulations are required to ensure accountability of the program participants, both institutions and student recipients, for proper program administration, to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds. The regulations include both recordkeeping and reporting requirements. The recordkeeping by the school allows for review of compliance with the regulations during on-site institution reviews. The Department uses the required reporting to allow for close-out of institutions that are no longer participating or who lose eligibility to participate in the program.

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 4752. 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. 2011–30135 Filed 11–21–11; 8:45 am]

BILLING CODE 4000–01–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 December 22, 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 emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 16, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

**Office of Postsecondary Education**

*Type of Review:* New.

*Title of Collection:* Transition and Postsecondary Programs for Students with Intellectual Disabilities Evaluation System.

*OMB Control Number:* Pending.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* Not-for-Profit Institutions.

*Total Estimated Number of Annual Responses:* 56.

*Total Estimated Annual Burden Hours:* 1087.

*Abstract:* On October 2010, the Office of Postsecondary Education (OPE) awarded 27 Institutes of Higher Education (IHE) grants to fund the creation of Transition Programs for Students with Intellectual Disabilities (TPSIDs) (model demonstrations) in 23 states.

OPE also awarded a grant to the Institute for Community Inclusion at the University of Massachusetts Boston to fund a coordinating center to support these TPSID grantees as well as other programs around the country that are working to transition students with cognitive disabilities into higher education. One of the Coordinating Center's roles is to develop an evaluation system for the TPSID programs. The proposed data collection system is part of that evaluation effort and involves establishment of a uniform dataset across the initial 27 sites (and potentially up to 31 additional IHEs) to ensure consistency in collection of information comprised by the previously listed 11 Government Performance and Results Act measures. The system will collect program data at the institution and individual level from TPSID program staff via an online, secure, data management system.

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 4706. 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. 2011–30134 Filed 11–21–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14241–001]**

### Alaska Energy Authority; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 27, 2011, and supplemented on November 11, 2011, the Alaska Energy Authority filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Susitna-Watana Hydroelectric Project (project) to be located on the Susitna River, near Cantwell, in Matanuska-Susitna Borough, Alaska. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 700-foot-high, either 2,500-foot-long concrete faced, rockfilled, or 2,630-foot-long roller compacted concrete or earth core rockfilled dam; (2) a reservoir with normal surface area of 22,500 acres and 2,500,000 acre-feet of usable storage capacity at elevation 2000 feet mean sea level; (3) three intakes at invert elevation of 1,800 feet equipped with three 18-foot-wide by 28-foot-high fixed wheel intake gates with trashracks; (4) a 36-foot-diameter, 3,700-foot-long diversion tunnel to be used during construction; (5) three turbine/generator units with a total capacity of 600 megawatts; (6) a 1,500-foot-long tailrace tunnel; (7) a 24-foot-wide gravel road from either the existing Denali Highway or from a road spur leading off the railroad at Gold Creek or Chulitna rail stops along the Alaska Railroad; (8) three 230-kilovolt transmission lines, each either 35 to 39 miles or 65 miles in length, connecting to either the existing Anchorage-Fairbanks Intertie near Gold Creek, Chulitna, or Cantwell along the Denali Highway; and (9) appurtenant facilities. The estimated annual generation of the project would be 2,600 gigawatt-hours.

*Applicant Contact:* Ms. Sara Fisher-Goad, Executive Director, Alaska Energy Authority, 813 West Northern Light Boulevard, Anchorage, AK 99503; *phone:* (907) 771–3000.

*FERC Contact:* Kim Nguyen; phone: (202) 502–6105.

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–14214–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30128 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–16–000]**

### Gulf South Pipeline Company, LP; Notice of Application

Take notice that on November 7, 2011, Gulf South Pipeline Company, LP (Gulf South), filed in Docket No. CP12–16–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by sale to the City of Pensacola d/b/a Energy Services of Pensacola (ESP) approximately 34.39 miles of mainline, lateral, and appurtenant facilities off of its Index 301 at the end of its interstate system in Florida, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to M.L. Gutierrez, Director, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, Texas 77046, or by calling (713) 479–8252 (telephone) or (713) 479–1745 (fax), *Nell.Gutierrez@bwpmlp.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

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 14 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.

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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Motions to intervene, protests and comments 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 under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

*Comment Date:* December 7, 2011.

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30127 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–142–000.

*Applicants:* CenterPoint Energy Gas Transmission Company, LLC.

*Description:* Housekeeping Filing—Nov 2011 to be effective 1/1/2012.

*Filed Date:* 11/10/2011.

*Accession Number:* 20111110–5043.

*Comment Date:* 5 p.m. ET on 11/22/2011.

*Docket Numbers:* RP12–143–000.
*Applicants:* Southern Natural Gas Company, L.L.C.
*Description:* Misc Compliance Filing 3 (Res Charge Credit) to be effective 10/20/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5130.
*Comment Date:* 5 p.m. ET on 11/22/2011.

*Docket Numbers:* RP12–144–000.
*Applicants:* Tennessee Gas Pipeline Company, L.L.C.
*Description:* TGP Name Change to TGP LLC to be effective 11/10/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5158.
*Comment Date:* 5 p.m. ET on 11/22/2011.

*Docket Numbers:* RP12–145–000.
*Applicants:* TransColorado Gas Transmission Company LLC.
*Description:* 2011–11–11 Fuel Gas Reimbursement to be effective 12/12/2011 under RP12–145 Filing Type: 570.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5016.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–146–000.
*Applicants:* Mojave Pipeline Company, LLC.
*Description:* EBB Notice Categories to be effective 12/14/2011 under RP12–146. Filing Type: 570.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5243.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–147–000.
*Applicants:* Destin Pipeline Company, L.L.C.
*Description:* Annual Revenue Crediting Report of Destin Pipeline Company, L.L.C.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5177.
*Comment Date:* 5 p.m. ET on 11/22/2011.

*Docket Numbers:* RP12–148–000.
*Applicants:* Southern Natural Gas Company, L.L.C.
*Description:* Southern Natural Gas Company, L.L.C. 2011 Opertional Transactions Report.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5276.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–149–000.
*Applicants:* Eastern Shore Natural Gas Company.
*Description:* Storage Tracker 10–2011 to be effective 10/1/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5379.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–150–000.
*Applicants:* Eastern Shore Natural Gas Company.
*Description:* Storage Tracker 11–2011 to be effective 11/1/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5411.
*Comment Date:* 5 p.m. ET on 11/28/2011.

*Docket Numbers:* RP12–151–000.
*Applicants:* Discovery Gas Transmission LLC.
*Description:* 2012 HMRE Filing to be effective 1/1/2012.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5052.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 28, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP12–51–001.
*Applicants:* Gulf Crossing Pipeline Company LLC.
*Description:* Amendment to RP12–51–000 to be effective 11/1/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5162.
*Comment Date:* 5 p.m. ET on 11/28/2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 15, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30066 Filed 11–21–11; 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 corporate filings:

*Docket Numbers:* EC12–27–000.
*Applicants:* Dynegy Danskammer, L.L.C., Dynegy Roseton, L.L.C.
*Description:* Dynegy Danskammer, L.L.C. and Dynegy Roseton, L.L.C., Application For Approval Under Section 203 of the Federal Power Act and Request for Shortened Notice Period and Expedited Consideration.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5156.
*Comment Date:* 5 p.m. ET on 11/29/2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3262–005.
*Applicants:* Trans Bay Cable LLC.
*Description:* Compliance Filing to Supersede Paper Filing and 4–8 Tariff to be effective 4/8/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5041.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER11–3262–006.
*Applicants:* Trans Bay Cable LLC.
*Description:* Compliance Filing to Supersede 6–30 Tariff to be effective 6/30/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5042.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER11–3576–002; ER11–3401–003; ER10–3138–002.
*Applicants:* Denver City Energy Associates, L.P., Golden Spread Electric Cooperative, Inc., Golden Spread Panhandle Wind Ranch, LLC,GS Electric Generating Cooperative, Inc.
*Description:* Golden Spread Electric Cooperative, Inc. et al. submits Notice of Change in Status.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5154.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER11–3957–003.
*Applicants:* Consumers Energy Company.
*Description:* Amended Facilities Agreement with MPLP to be effective 8/29/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5109.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER11–4374–002.
*Applicants:* Portland General Electric Company.
*Description:* Volume 12 Corrected Amendment Filing to be effective 10/24/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5076.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–214–001.
*Applicants:* ALLETE, Inc., Midwest Independent Transmission System Operator, Inc.
*Description:* 11–08–11 ALLETTE Attachment GG Amendment to be effective 1/1/2012.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5117.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–22–001.
*Applicants:* Endure Energy, L.L.C.
*Description:* Amendment to pending normal to be effective 11/8/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5004.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–361–000.
*Applicants:* South Carolina Electric & Gas Company.
*Description:* Compliance filing to docket #ER10–516, ER10–1268, ER10–855 to be effective 11/7/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5001.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–362–000.
*Applicants:* Southern California Edison Company.
*Description:* LGIA, Pacific Wind Project, Pacific Wind LLC to be effective 11/9/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5003.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–363–000.
*Applicants:* Volunteer Energy Services, Inc.
*Description:* Baseline refile to be effective 11/8/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5038.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–364–000.
*Applicants:* Rockland Wind Farm LLC.
*Description:* Compliance Filing to be effective 10/17/2011.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5116.
*Comment Date:* 5 p.m. ET on 11/29/2011.

*Docket Numbers:* ER12–365–000.
*Applicants:* Rock Island Clean Line LLC.
*Description:* Application of Rock Island Clean Line LLC for Authorization to Sell Transmission Services at Negotiated Rates and for Related Relief.
*Filed Date:* 11/08/2011.
*Accession Number:* 20111108–5159.
*Comment Date:* 5 p.m. ET on 11/29/2011.

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: November 9, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30067 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* ER11–4070–001.
*Applicants:* RITELine Illinois, LLC, RITELine Indiana, LLC.
*Description:* RITELine Indiana Compliance Filing to be effective 10/17/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5331.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER11–4706–001.
*Applicants:* Viridity Energy, Inc.
*Description:* Supplement to MBR Application of Viridity Energy, Inc. to be effective 11/28/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5325.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–21–001.
*Applicants:* Agua Caliente Solar, LLC.
*Description:* Supplement to Application for Market-Based Rate Authority to be effective 12/5/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5175.
*Comment Date:* 5 p.m. ET on 11/25/2011.

*Docket Numbers:* ER12–224–001.
*Applicants:* Stream Energy Columbia, LLC.
*Description:* Amendment to MBR Application to be effective 10/27/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5202.
*Comment Date:* 5 p.m. ET on 11/25/2011.

*Docket Numbers:* ER12–225–001.
*Applicants:* Stream Energy New Jersey, LLC.
*Description:* Amendment to MBR Application to be effective 10/27/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5203.
*Comment Date:* 5 p.m. ET on 11/25/2011.

*Docket Numbers:* ER12–240–001.
*Applicants:* PPL Energy Supply, LLC.
*Description:* PPL Energy Supply Amendment Filing to be effective 11/29/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5162.
*Comment Date:* 5 p.m. ET on 11/21/2011.

*Docket Numbers:* ER12–381–000.
*Applicants:* California Independent System Operator Corporation.
*Description:* 2011–11–10 CAISO Amendment 2 to ICAOA with SRP to be effective 12/31/9998.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5098.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–382–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Original Service Agreement No. 3094; Queue No. V4–067 to be effective 10/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5103.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–383–000.
*Applicants:* TBG Cogen Partners.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5114.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–384–000.
*Applicants:* Calpine Bethlehem, LLC.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.

*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5117.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–385–000.
*Applicants:* CES Marketing V, L.P.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5119.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–386–000.
*Applicants:* Calpine Mid-Atlantic Marketing, LLC.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5127.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–387–000.
*Applicants:* Nissequogue Cogen Partners.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5134.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–388–000.
*Applicants:* Calpine Newark, LLC.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5137.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–389–000.
*Applicants:* KIAC Partners.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5140.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–390–000.
*Applicants:* Zion Energy LLC.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5145.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–391–000.
*Applicants:* Calpine Philadelphia Inc.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5146.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–392–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Original Service Agreement No. 3098—Queue Position S61 to be effective 10/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5159.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–393–000.
*Applicants:* CPN Bethpage 3rd Turbine, Inc.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5160.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–394–000.
*Applicants:* Bethpage Energy Center 3, LLC.
*Description:* Revised Market-Based Rate Tariff to be effective 11/11/2011.
*Filed Date:* 11/10/2011.
*Accession Number:* 20111110–5168.
*Comment Date:* 5 p.m. ET on 12/1/2011.

*Docket Numbers:* ER12–395–000.
*Applicants:* Northern States Power Company, a Minnesota Corporation.
*Description:* 2011–11–11_Tm-1_Comp_Filing to be effective 1/1/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5012.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–396–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* GRE-Amended JPZ_RS 28 to be effective 1/1/2012.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5014.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–397–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* G491 Amended LGIA (11–11–11) to be effective 11/15/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5024.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–398–000.
*Applicants:* Southwestern Electric Power Company.
*Description:* 20111111 AEPSC and Bentonville Sub I Letter Agreement to be effective 12/17/2010.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5026.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–399–000.
*Applicants:* Interstate Power and Light Company.
*Description:* IPL and Exergy—LBA Agreement to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5168.
*Comment Date:* 5 p.m. ET on 12/5/2011.

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: November 15, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30113 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## 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:* ER08–375–005.
*Applicants:* Southern California Edison Company.
*Description:* Southern California Edison Company's (SCE) Refund Report, in Compliance with the October 6, 2011, Rehearing Order.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5032.
*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER11–4219–000; ER11–4253–000.
*Applicants:* Wolverine Power Supply Cooperative, Inc., Michigan Electric Transmission Company.
*Description:* Wolverine Power Supply Cooperative, Inc et al submits responses to FERC's 9/30/11 Deficiency Letter that addresses the three amended and restated wires-to-wires interconnection agreements w/City of Grand Haven Board of Light & Power.
*Filed Date:* 10/31/2011.
*Accession Number:* 20111101–0008.
*Comment Date:* 5 p.m. ET on 11/21/2011.

*Docket Numbers:* ER12–400–000.
*Applicants:* PJM Interconnection, L.L.C.

*Description:* Original Service Agreement No. 3099; Queue No. W3–154 to be effective 10/12/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5170.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–401–000.
*Applicants:* Interstate Power and Light Company.
*Description:* IPL and Bethel Wind—LBA Agreement to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5171.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–402–000.
*Applicants:* Interstate Power and Light Company.
*Description:* IPL and Rippey Wind—LBA Agreement to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5178.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–403–000.
*Applicants:* Interstate Power and Light Company.
*Description:* IPL and Vienna Wind—LBA Agreement to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5188.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–404–000.
*Applicants:* Interstate Power and Light Company.
*Description:* IPL and Wellsburg Wind—LBA Agreement to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5198.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–405–000.
*Applicants:* PJM Interconnection, L.L.C., American Electric Power Service Corporation.
*Description:* AEPSC submits SA No. 1336—29th Revised ILDSA among AEPSC & Buckeye to be effective 10/6/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5223.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–406–000.
*Applicants:* PJM Interconnection, L.L.C., Monongahela Power Company, The Potomac Edison Company, West Penn Power Company.
*Description:* Monongahela Power Co, et al. submits Compliance Filing per Order in ER10–1152 to be effective 9/17/2010.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5265.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–407–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Dallas PPA Filing to be effective 1/1/2012.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5298.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–408–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Forest City PPA Filing to be effective 1/1/2012.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5301.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–409–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Cancellation of OATT, Ninth Revised Vol &, Tariff ID 54 to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5324.
*Comment Date:* 5 p.m. ET on 12/5/2011.

*Docket Numbers:* ER12–410–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* OATT, Tenth Revised Volume No 7 to be effective 11/14/2011.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5415.
*Comment Date:* 5 p.m. ET on 12/5/2011.

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: November 15, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30112 Filed 11–21–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #3

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–29–000.
*Applicants:* Bluegrass Generation Company, L.L.C., Louisville Gas & Electric Company, Kentucky Utilities Company.
*Description:* Section 203 Application of Bluegrass Generation Company, L.L.C., et al.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5470.
*Comment Date:* 5 p.m. ET on 12/5/2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–411–000.
*Applicants:* Puget Sound Energy, Inc.
*Description:* Temporary Operational Support Program Agreement to be effective 10/1/2011.
*Filed Date:* 11/15/2011.
*Accession Number:* 20111115–5005.
*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–412–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* Request of PJM Interconnection, L.L.C. For Limited Tariff Waiver, Shortened Comment Period, And Expedited Commission Action.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5462.
*Comment Date:* 5 p.m. ET on 11/21/2011.

*Docket Numbers:* ER12–413–000.
*Applicants:* Xcel Energy Services Inc.
*Description:* Notice of Cancellation of Xcel Energy Services Inc, et al. under ER12–413.
*Filed Date:* 11/14/2011.
*Accession Number:* 20111114–5465.
*Comment Date:* 5 p.m. ET on 12/5/2011.

Take notice that the Commission received the following electric reliability filings:

*Docket Numbers:* RD11–13–000.
*Applicants:* North American Electric Reliability Corporation.
*Description:* Petition of the North American Electric Reliability Corporation for Approval of a Proposed Modification to the Glossary of Terms Used in Reliability Standards Definition of ''Protection System''.
*Filed Date:* 03/30/2011.

Accession Number: 20110330–5244.

*Comment Date:* 5 p.m. ET on 12/15/2011.

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: November 15, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30111 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #4

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC09–78–000; EC09–78–001.

*Applicants:* Otter Tail Power Company, Cascade Investment, L.L.C.

*Description:* Notice of Non-Consummation and Request for Withdrawal of Authorizing Order by Cascade Investment, L.L.C. and Otter Tail Power Company.

*Filed Date:* 11/02/2011.

*Accession Number:* 20111102–5171.

*Comment Date:* 5 p.m. ET on 11/22/2011.

*Docket Numbers:* EC12–30–000.

*Applicants:* Michigan Electric Transmission Company, LLC.

*Description:* Application of Michigan Electric Transmission Company, LLC for Approval of Acquisition of Transmission Assets under Section 203 of the Federal Power Act.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5127.

*Comment Date:* 5 p.m. ET on 12/6/2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–3058–001; ER10–3059–001; ER10–3065–001; ER10–3066–001.

*Applicants:* Pinelawn Power, LLC.

*Description:* Supplemental Information of J-POWER North America Holdings Co., Ltd.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5111.

*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–414–000.

*Applicants:* PacifiCorp.

*Description:* Termination of Brigham City Construction Agreement to be effective 2/6/2012.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5095.

*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–415–000.

*Applicants:* El Paso Marketing Company, L.L.C.

*Description:* Notice of succession to be effective 11/16/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5103.

*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–416–000.

*Applicants:* New York Independent System Operator, Inc.

*Description:* FID 209 Errata RS 1 MST 4.5 to be effective 11/8/2010.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5113.

*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–417–000.

*Applicants:* Mesquite Solar 1, LLC.

*Description:* Mesquite Solar 1 LLC Shared Facilities Agreement to be effective 11/16/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5132.

*Comment Date:* 5 p.m. ET on 12/6/2011.

*Docket Numbers:* ER12–418–000.

*Applicants:* Mesquite Power, LLC.

*Description:* Mesquite Power, LLC Concurrence to Shared Facilities Agreement to be effective 11/16/2011.

*Filed Date:* 11/15/2011.

*Accession Number:* 20111115–5140.

*Comment Date:* 5 p.m. ET on 12/6/2011.

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: November 15, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30114 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12576–008]**

### CRD Hydroelectric LLC; Western Minnesota Municipal Power Agency; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On October 14, 2011, CRD Hydroelectric LLC (transferor) and Western Minnesota Municipal Power Agency (transferee) filed an application for transfer of license for the Red Rock Hydroelectric Project, No. 12576, located on the Des Monies River in Marion County, Iowa.

Applicants seek Commission approval to transfer the license for the Red Rock Hydroelectric Project from transferor to transferee.

*Applicants' Contact:* Transferor: Raymond J. Wahle, P.E., CRD Hydroelectric LLC, 3724 W. Avera Drive, P.O. Box 88920, Sioux Falls, SD (605) 330–6963. Transferee: Robert J. Wahle, P.E., Missouri River Energy Services, LLC, 3724 W. Avera Drive, P.O. Box 88920, Sioux Falls, SD 57109, (605) 330–6963.

*FERC Contact:* Patricia W. Gillis at (202) 502–6779, *patricia.gillis@ferc.gov.*

*Deadline for filing comments and motions to intervene:* 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *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. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. More information about this project 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–12576) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: November 15, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30024 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2246–058]**

### Yuba County Water Agency; Notice of Panel Meeting and Technical Conference Details

On October 20, 2011, the National Oceanic and Atmospheric Administration's, National Marine Fisheries Service (NMFS), filed a Notice to initiate a formal study dispute resolution process, pursuant to 18 CFR 5.14, in the relicensing proceeding for the Yuba County Water Agency's (YCWA) Yuba River Hydroelectric Project No. 2246. NMFS disputed the treatment of several of its study requests, filed on March 7, 2011, in the Commission's study plan determination, issued on September 30, 2011. NMFS specifically identified study requests one through six and study request eight as the disputed components of its, March 7, 2011 filing. In its study requests one through six NMFS requested studies of the effects of project and related activities on: (1) Fish passage for anadromous fish; (2) hydrology for anadromous fish; (3) water temperatures for anadromous fish migration, holding, spawning, and rearing needs; (4) coarse substrate for anadromous fish: Sediment supply, transport, and storage; (5) large wood and riparian habitat for anadromous fish; and (6) loss of marine-derived nutrients in the Yuba River, respectively. In study request eight, NMFS requested a study of, ''anadromous fish ecosystem effects analysis: Synthesis of direct, indirect, and cumulative effects of the project and related facilities on anadromous fish. On November 7, 2011, the dispute resolution panel convened. On November 9, 2011, the Commission issued a Notice of Dispute Resolution Process Schedule, Panel Meeting, and Technical Conference. The technical conference date is repeated below with additional logistical details.

The purpose of the technical conference is for the disputing agency, the applicant, and the Commission to provide the panel with additional information necessary to evaluate the disputed studies. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting as observers. The panel may also request information or clarification on written submissions as necessary to understand the matters in dispute. The panel will limit all input that it receives to the specific studies or information in dispute and will focus on the applicability of such studies or information to the study criteria stipulated in 18 CFR 5.9(b). If the number of participants wishing to speak creates time constraints, the panel may, at its discretion, limit the speaking time for each participant.

**Technical Conference**

*Date:* Wednesday, November 30, 2011.

*Time:* 9 a.m.–5 p.m.

*Place:* Holiday Inn, Sacramento—Capitol Plaza, 300 J Street, Sacramento, CA 95814, (916) 446–0100.

For more information, please contact Stephen Bowler, the dispute panel chair, at *stephen.bowler@ferc.gov* or (202) 502–6861.

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30124 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[137 FERC ¶61,131; Docket No. RD11–3–000]**

### Before Commissioners: Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur; North American Electric Reliability Corporation; Order Approving Reliability Standard

1. On January 28, 2011, the North American Electric Reliability Corporation (NERC) submitted a petition seeking approval of a revised Facilities Design, Connections, and Maintenance (FAC) Reliability Standard FAC–013–2—Assessment of Transfer Capability for the Near-Term Transmission Planning Horizon, pursuant to section 215(d)(1) of the Federal Power Act (FPA) [1] and section 39.5 of the Commission's regulations.[2] The revised Reliability Standard requires planning coordinators to have a transparent methodology for, and to annually perform, an assessment of transmission transfer capability for the Near-Term Transmission Planning Horizon, as a basis for identifying system weaknesses or limiting facilities that could limit energy transfers in the future. NERC also requests approval of two new terms utilized in the proposed Reliability Standard, to be included in NERC's Glossary of Terms Used in NERC Reliability Standards (NERC Glossary or Glossary). Finally, NERC requests approval of its implementation plan for Reliability Standard FAC–013–2, setting an effective date that will allow planning coordinators a reasonable time, after certain related Modeling, Data, and Analysis (MOD) Reliability Standards have gone into effect, to meet the requirements of the revised Reliability Standard.

2. As explained below, we find that revised Reliability Standard FAC–013–2 (including the associated new Glossary terms and implementation plan) is just, reasonable, not unduly discriminatory or preferential and in the public interest. We accept the violation risk factors and violation severity levels associated with the standard as proposed by NERC, with three exceptions described below. We also deny a request by the Electric Reliability Council of Texas (ERCOT) for an exemption from Reliability Standard FAC–013–2.

**I. Background**

3. The Commission certified NERC as the Electric Reliability Organization (ERO), as defined in section 215 of the FPA, in July 2006.[3] In Order No. 693, the Commission reviewed an initial set of Reliability Standards as developed and submitted for review by NERC, accepting 83 standards as mandatory

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

[2] 18 CFR 39.5 (2011).

[3] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006), *order on compliance,* 118 FERC ¶ 61,190, *order on reh'g* 119 FERC ¶ 61,046 (2007), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

and enforceable.[4] In Order No. 693, the Commission, *inter alia,* accepted Reliability Standard FAC–013–1, which sets out requirements for communication of transfer capability calculations. In addition, the Commission directed NERC to modify FAC–013 so that it would apply to all reliability coordinators.[5]

4. Also related to NERC's immediate proposal, the Commission, in Order No. 693, neither approved nor remanded Reliability Standard FAC–012–1, which set out proposed requirements for documenting the methodologies used by reliability coordinators and planning authorities in determining transfer capability.[6] Because additional information was needed regarding the standards' reference to regional implementation, the Commission did not act on proposed FAC–012–1, but directed certain changes to be included in a revised version of FAC–012–1. In particular, the Commission stated that the standard should provide a framework for the calculation of transfer capabilities, including data inputs and modeling assumptions.[7] Further, the Commission stated that the process and criteria used to determine transfer capabilities must be consistent with the process and criteria used in planning and operating the system.[8]

5. Subsequently, as part of its submission of revised Modeling, Data, and Analysis (MOD) Reliability Standards, which govern the calculation of Available Transfer Capability (ATC), NERC requested that it be permitted to withdraw FAC–012–1 and retire FAC–013–1. In Order No. 729, the Commission found that FAC–012–1 and FAC–013–1 had not been wholly superseded by the revised MOD Reliability Standards because the revised MOD Reliability Standards did not address the calculation of transfer capabilities in the planning horizon.[9] Moreover, the Commission found that the existing versions of FAC–012–1 (as adopted by NERC) and FAC–013–1 (as approved by FERC) were insufficient to address the Commission's concerns as stated in Order No. 693, and ordered NERC to develop specific modifications to comply with those outstanding directives.[10]

6. The Commission explained in Order No. 729 the potential value of assessing transfer capabilities in the planning horizon, as a means of improving the long-term reliability of the Bulk-Power System:

> The Commission recognizes that the calculation of transfer capabilities in the planning horizon (years one thorough five) may not be so accurate to support long-term scheduling of the transmission system but we do believe that such forecasts will be useful for long-term planning, in general, by measuring sufficient long-term capacity needed to ensure the reliable operation of the Bulk-Power System. Although regional planning authorities have developed similar efforts in response to Order No. 890, we believe that the requirements imposed by FAC–012 and FAC–013 need not be duplicative of those existing efforts and, by contrast, should be focused on improving the long-term reliability of the Bulk-Power System pursuant to the ERO's Reliability Standards.[11]

Thus, the Commission directed NERC to develop modifications to FAC–012–1 and FAC–013–1 to comply with the directives of Order No. 693 and to otherwise revise those Standards to be consistent with the revised MOD Reliability Standards.[12]

## II. NERC's Petition

7. In its Petition, NERC explains that FAC–013–2 was developed in response to Commission directives in Order Nos. 693 and 729 (as discussed above) to require appropriate entities to perform an annual assessment of transfer capability in the planning horizon and to do so using data inputs and modeling assumptions that are consistent with other planning uses. Under Requirement R1, each planning coordinator must have a documented methodology for performing an annual assessment of transfer capability in the Near-Term Transmission Planning Horizon. Under Requirement R2, each planning coordinator must share its methodology with adjacent planning coordinators and transmission planners, and with other functional entities with a reliability-related need for the information. Under Requirement R3, planning coordinators must provide a documented response to comments made by an interested party about the methodology. Under Requirement R4, planning coordinators must conduct and document an annual simulation or assessment of transfer capability for at least one year in the Near-Term Transmission Planning Horizon. Under Requirement R5, planning coordinators must make the results of the assessment available to the same types of parties identified in Requirement R2. Finally, under Requirement R6, planning coordinators must provide data to support the assessment if requested by identified interested parties.[13]

8. NERC explains in its Petition that the proposed Reliability Standard addresses the Commission's directives by requiring planning coordinators to undertake an annual assessment of transfer capability in the planning horizon, and by requiring the use of certain data inputs and modeling assumptions to identify future transmission system weaknesses or limiting facilities.

9. NERC also requests approval of the terms ''Near-Term Transmission Planning Horizon'' and ''Year One'' to be added to the NERC Glossary. Finally, NERC proposes an implementation plan that includes an effective date for the revised Reliability Standard that is the later of (1) the first day of the calendar quarter twelve months after Commission approval of FAC–013–2, or (2) the first day of the calendar quarter six months after Reliability Standards MOD–001–1, MOD–028–1, MOD–029–1, and MOD–030–1 go into effect.[14] At that time, the plan calls for the retirement of existing Reliability Standards FAC–012–1 and FAC–013–1.[15]

## III. Notice of Filing and Responsive Pleading

10. Notice of NERC's Petition was issued on Feb. 2, 2011 and published on Feb. 10, 2011 in the **Federal Register**, with comments, protests and motions to intervene due on or before Feb. 28, 2011.[16] Two sets of comments were received. The Midwest Independent Transmission System Operator, Inc. (MISO) and the New York Independent System Operator, Inc. (NYISO) filed a joint set of comments asking the Commission to reject FAC–013–2 as duplicative of the now-effective Transmission Planning (TPL) Standards. In addition, the ERCOT filed a motion to intervene out-of-time, asking the Commission to find that ERCOT should

[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] *Id.* P 790, 794.

[6] *Id.* P 776, 782. *See also id.* P 287 (discussing ''fill-in-the-blank'' standards). NERC's proposed FAC–013–2 addresses directives pertaining to related to both FAC–013–1 and FAC–012–1.

[7] *Id.* P 779.

[8] *Id.* P 782.

[9] *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability and Existing Transmission Commitment and Mandatory Reliability Standards for the Bulk-Power System,* Order No. 729, 129 FERC ¶ 61,155, at P 291 (2009); *order on reh'g,* Order No. 729–A, 131 FERC ¶ 61,109, *order on reh'g,* Order No. 729–B, 132 FERC ¶ 61,027 (2010).

[10] *Id.*

[11] *Id.* P 290.

[12] *Id.* P 291.

[13] *See* NERC Petition at 8–10, Ex. A.

[14] The relevant MOD Reliability Standards went into effect on April 1, 2011.

[15] NERC Petition at Ex. B.

[16] 76 FR 7557 (2011).

be exempt from FAC–013–2's requirements.

11. MISO and NYISO state that Reliability Standard FAC–013–2 will not provide any reliability benefits beyond those conferred by the current TPL Reliability Standards, arguing that proposed Reliability Standard FAC–013–2 is ''substantially similar'' to the approved TPL Reliability Standards in purpose and in the assessments required.[17] MISO and NYISO further argue that both the proposed Reliability Standard and the TPL Reliability Standards (particularly TPL–002) require an assessment of system conditions over the Near-Term Transmission Planning Horizon using similar assumptions or inputs, including contingencies, system conditions, projected firm transfers or transmission uses, and system demand levels.[18]

12. MISO and NYISO note that the TPL Reliability Standards require applicable entities not only to perform system simulations and related annual assessments to identify reliability issues based on current and projected firm transmission commitments, but also to take affirmative action to address any identified reliability issues based on those commitments. MISO and NYISO argue that the very similar assessment required under Reliability Standard FAC–013–2, which is intended ''to identify potential future Transmission System weaknesses and limiting Facilities that could impact the Bulk Electric System's (BES) ability to reliability transfer energy,'' does not provide a similar obligation to rectify any deficiencies identified from the assessment as is found in the TPL Standards, and therefore has questionable value.[19] As an example, MISO and NYISO note that if an assessment performed under Reliability Standard FAC–013–2 found that incremental transfer capability was 0 MW at some point within the Near-Term Transmission Planning Horizon, FAC–013–2 does not provide any guidance about steps to be taken to address the identified weaknesses. Accordingly, MISO and NYISO argue that Reliability Standard FAC–013–2 is unnecessary and could lead to confusion with respect to the responsible entities' obligations to preserve the reliability of the BES.[20]

13. Finally, MISO and NYISO note that a calculation of transfer capability that is set one to five years in the future (i.e., the Near-Term Transmission Planning Horizon) does not provide any useful information for the future reliable operation of the system, because system conditions are likely to be significantly different than those assumed for the required assessment.[21]

14. ERCOT initially notes its support for MISO and NYISO's position that FAC–013–2 is unnecessary given its overlap with the requirements of the TPL Reliability Standards.[22] However, if Reliability Standard FAC–013–2 is approved over MISO and NYISO's objections, ERCOT asks the Commission to provide an exemption for the ERCOT region. ERCOT notes that the revised Reliability Standard was developed in response to the Commission's directive to apply the transfer capability methodology requirements, as implemented in the MOD Reliability Standards, to the planning horizon.[23] ERCOT states that the Commission has already found that the requirements of the MOD Reliability Standards governing the calculation of ATC provide no reliability benefit in the ERCOT region, essentially recognizing that ERCOT has no transmission market (and instead manages congestion through re-dispatch of generation), and that ERCOT has no interchange with neighboring regions. ERCOT argues that the same rationale applies for Reliability Standard FAC–013–2 with respect to the planning horizon, as ERCOT's reliability planning analyses are performed using the same assumptions as are used for operations.[24]

15. ERCOT notes that the Texas Reliability Entity, Inc. (Texas RE)[25] supported ERCOT's position on the propriety of an ERCOT exemption through comments submitted during NERC's Standards Development Process. Texas RE provided the following rationale for the exemption: ''ERCOT does not need to address transmission allocation issues either in the operating horizon or in the planning horizon. To the extent that ERCOT does planning studies to examine transfers, those studies are related more to economic planning than to reliability.''[26] ERCOT further argues that the Standards Drafting Team failed to draw a meaningful distinction between the MOD requirements regarding calculation of transfer capabilities in the operating horizon, which are not applicable to ERCOT by virtue of a FERC-granted exemption, and FAC–013–2's requirements related to assessment of transfer capabilities in the planning horizon.[27]

## IV. Discussion

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, the timely joint motion to intervene filed by MISO and NYISO serves to make them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 CFR 385.214(d), the Commission will grant ERCOT's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

### *A. Reliability Standard FAC–013–2*

17. We approve Reliability Standard FAC–013–2 and find that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. We also approve the proposed implementation plan for Reliability Standard FAC–013–2, which would retire Reliability Standards FAC–012–1 and FAC–013–1 when FAC–013–2 becomes effective. We accept the addition of the terms ''Near-Term Transmission Planning Horizon'' and ''Year One'' to the NERC Glossary. Finally, we find that the proposed Reliability Standard satisfies our outstanding directives in Order Nos. 693 and 729 regarding the non-discriminatory assessment of transfer capability in the planning horizon.[28]

18. Contrary to the arguments of MISO and NYISO, we find that Reliability Standard FAC–013–2 provides a unique reliability benefit beyond that conferred by the TPL Standards. Reliability Standard FAC–013–2 is designed to ensure that planning coordinators perform annual assessments to identify potential weaknesses and limiting facilities of the bulk electric system. Such potential weaknesses and limitations could ultimately affect reliable transfers of energy. Further, in performing the required annual assessment, the

[17] MISO and NYISO Comments at 3–4.

[18] *Id.* at 4.

[19] *Id.* at 5.

[20] *Id.*

[21] *Id.* at 6.

[22] ERCOT Comments at 2.

[23] *Id.* at 3.

[24] *Id.* at 3–4 (noting that the Commission agreed with ERCOT's position that applying the MOD Reliability Standards to ERCOT would not provide any reliability benefits due to physical differences in ERCOT's transmission system (citing Order No. 729, 129 FERC ¶ 61,155 at P 292–93, 296 and 298)).

[25] Texas RE is the approved regional entity, as defined under FPA section 215(e)(4), for the ERCOT region, with delegated authority from NERC to develop, monitor, assess, and enforce compliance with NERC Reliability Standards within that region.

[26] ERCOT Comments at 5 (quoting from Texas RE Comments submitted to NERC in the Standards Development Process).

[27] *Id.* at 6.

[28] *See* Background Section above describing the pending Commission directives from Order No. 693 and Order No. 729.

planning coordinator must consider both current approved and *projected* transmission uses.[29]

19. By contrast, the TPL Reliability Standards set out specific performance requirements for all transmission planners (as well as planning authorities and coordinators), requiring among other things a demonstration that each transmission planner's portion of the bulk electric system is designed to maintain system stability and to stay within thermal and voltage limits, while serving forecast customer demand and all projected firm (non-recallable) reserved transmission services.[30] Thus, the TPL Reliability Standards do not require a planning assessment that reflects all projected transmission uses but, rather, an assessment that reflects only projected *firm reserved* transmission uses. In other words, Reliability Standard FAC–013–2 differs from the TPL standards because the former focuses on identifying potential weaknesses that could limit energy transfers across a broader region and requires the planning coordinator to consider any expected transmission uses, regardless of whether they have been scheduled or otherwise reserved, and thereby allows for an assessment that may be more accurate in the outer years of the planning horizon.

20. As MISO and NYISO note, Reliability Standard FAC–013–2 does not impose an obligation to develop a plan to address identified limitations in transfer capability in the Near-Term Transmission Planning Horizon. However, the lack of such an obligation does not detract from the Reliability Standard's value as an informational tool for the early identification of inter-regional or intra-regional limitations on transfers. In Order No. 729, the Commission recognized that the calculation of transfer capabilities in the planning horizon (years one through five) may not be accurate enough to support long-term scheduling of the transmission system.[31] The Commission nonetheless determined that such forecasts would be useful ''for long-term planning, in general, by measuring sufficient long-term capacity needed to ensure the reliable operation of the Bulk-Power System.'' [32]

21. Consistent with its purpose as a planning tool with a regional focus, rather than a mechanism for ensuring that individual systems are planned to reliably meet projected load and known transmission uses, Reliability Standard FAC–013–2 provides the planning coordinator flexibility in determining what transfers to assess. Moreover, an assessment conducted pursuant to FAC–013–2 may include transmission uses that are expected but which are not yet scheduled or reserved (*e.g.,* expected interconnection of a large group of renewable generators), and can be used as a regional coordination tool rather than as a means of ensuring adequate planning for reliable system performance. Accordingly, we find that Reliability Standard FAC–013–2 does confer reliability benefits beyond those provided by the TPL Reliability Standards, and we are not persuaded by the arguments of MISO and NYISO on this issue.

22. We further find that Reliability Standard FAC–013–2 satisfies certain outstanding directives from Order Nos. 693 and 729 which are not satisfied by the TPL Reliability Standards. Reliability Standard FAC–013–2 requires the planning coordinator to perform an annual assessment of transfer capability for at least one year in the Near-Term Transmission Planning Horizon, and to document that the assumptions and criteria used to perform the assessment are consistent with the planning coordinator's planning practices. By contrast, the TPL Reliability Standards impose system performance requirements under various conditions, and do not require a specific assessment of transfer capabilities within a single system or across interconnected transmission systems. While we agree that Reliability Standard FAC–013–2 and the TPL Reliability Standards are designed primarily to encourage adequate longer-term planning rather than to generate accurate measures of ATC or total transfer capability (TTC), we believe that our outstanding directives regarding the review of transfer capability within the planning horizon are not satisfied by the TPL Reliability Standards.

### *B. Violation Risk Factors and Violation Severity Levels*

23. We find that the violation risk factors (VRFs) assigned to Requirements R2, R3, R5 and R6 are consistent with the Commission's established guidelines and approve them as filed.[33] However, we find that NERC has not adequately justified its proposed ''lower'' VRF designation for Requirements R1 and R4, and direct NERC to either provide additional justification for these VRF designations or propose a revised VRF designation that addresses our concerns.

24. NERC states that Requirements R1 and R4 meet the definition of a ''lower'' risk requirement because they are ''strictly administrative in nature and are in the planning timeframe,'' and because ''it is not anticipated that under emergency, abnormal or restorative conditions violation of this requirement would affect the electric state or capability of the BES.'' [34]

25. Requirement R4 does not appear to be ''administrative in nature,'' in that it requires the planning coordinator to annually conduct a simulation assessing transfer capability on its system during at least one year in the near-term planning time frame. Requirement R4 requires an affirmative action by the applicable entity, and not merely documentation of the results of the study.

26. We have similar concerns with respect to R1, as it is a substantive requirement to adopt and document a methodology for assessing transfer capability that is consistent with the specific criteria set out in sub-requirements R1.1.2–1.5. This requirement goes further than mere documentation, and instead establishes the criteria that must be incorporated into a compliant methodology.

27. Finally, we approve the violation severity levels (VSLs) for FAC–013–2 as proposed, with the exception of the VSL triggers for R1, which appear to contain a typographical error. The VSL language for R1, as filed by NERC, uses the same description for ''medium,'' ''high,'' and ''severe'' violations, as follows:

The Planning Coordinator has a Transfer Capability methodology, but failed to

[29] *See* proposed Reliability Standard FAC–013–2 R.1.4.4.

[30] *See* Reliability Standard TPL–001–0.1 R1.

[31] Order No. 729, 129 FERC ¶ 61,155 at P 290.

[32] *Id.*

[33] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,145, *order on reh'g,* 120 FERC ¶ 61,145, at P 8–13 (2007); *North American Electric Reliability Corp.,* 123 FERC ¶ 61,284, at P 20–35, *order on reh'g & compliance,* 125 FERC ¶ 61,212 (2008); *North American Electric Reliability Corp.,* 135 FERC ¶ 61,166 (2011). Given the significant change in the scope of FAC–013–2 as compared to the original standards from which its requirements derive (FAC–012–1 and FAC–013–2), a reduction in the assigned VRF levels appears to be warranted for at least some of the requirements.

[34] NERC Petition at 33–34. The approved NERC definition for a ''lower'' VRF designation is as follows:

Lower Risk Requirement: Is administrative in nature and (a) is a requirement that, if violated, would not be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor and control the Bulk-Power System; or (b) is a requirement in a planning time frame that, if violated, would not, under the emergency, abnormal, or restorative conditions anticipated by the preparations, be expected to affect the electrical state or capability of the Bulk-Power System, or the ability to effectively monitor, control, or restore the Bulk-Power System.

*See North American Electric Reliability Corporation,* 119 FERC ¶ 61,145, at P9, *order on compliance,* 121 FERC ¶ 61,179, at P 2 and Appendix A (2007).

incorporate one of [sub-requirements 1.1 through 1.5] of Requirement R1 into that methodology.

It appears that these triggers were intended to be progressive, i.e., the failure to incorporate one component was intended to be a medium level violation, as is currently stated in NERC's filed version of FAC–013–2, but a high level violation should require a failure to incorporate *two* components, and so on. Accordingly, we will direct NERC to modify the VSL language for Requirement R1 to correct this apparent error.

28. For the reasons stated above, we direct NERC to submit a compliance filing within 60 days of issuance of this order, that (1) either proposes a ''medium'' VRF designation for Requirements R1 and R4, or provides additional justification for a ''lower'' VRF level; and (2) corrects the proposed VSL language for R1.

*C. Applicability to ERCOT*

29. For the reasons discussed below, we are not persuaded by ERCOT's arguments and, therefore, deny ERCOT's request for an exemption. ERCOT points out that the Commission granted an exemption to ERCOT regarding certain modeling, data and analysis, or MOD, Reliability Standards and believes that the Commission should grant ERCOT a similar exemption regarding compliance with FAC–013–2. Reliability Standard FAC–013–2, however, is distinguishable from the MOD Reliability Standards because the MOD Reliability Standards address methodologies for calculating ATC and total transfer capability (TTC) for the purpose of allocating transmission capacity. In Order No. 729, the Commission agreed that the MOD Reliability Standards would not provide any reliability benefit to ERCOT due to physical differences in ERCOT's transmission system.[35]

30. In contrast to the MOD Reliability Standards, FAC–013–2 is not designed primarily to ensure non-discriminatory allocation of transmission capacity among transmission market participants, but is instead a planning tool, with a particular focus on identifying weaknesses or limitations in transfer capability between regions (including constrained regions within a single market such as ERCOT). We believe ERCOT, like other regions, will benefit from the assessment of potential limitations in transfer capability in the planning horizon over the Near-Term Transmission Planning Horizon that is required under FAC–013–2.

31. Moreover, ERCOT concedes that it currently has a planning process in place that allows it to address ''prospective weaknesses and limiting facilities that may arise under all probable prospective operating conditions.''[36] That ERCOT already undertakes these kinds of planning assessments leads to the conclusion that such assessments are in fact useful to ERCOT. Incorporating an obligation to continue performing such an assessment as part of a mandatory and enforceable Reliability Standard, especially one that will provide for greater levels of transparency as to how the assessments are done, will not only provide a meaningful reliability benefit but also would presumably impose little additional burden on ERCOT.

**V. Information Collection Statement**

32. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency action.[37] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Order will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

33. The Commission will submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited within 60 days of the date this order is published in the **Federal Register** on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Comments should be submitted following the Commission's submission guidelines at *http://www.ferc.gov/help/submission-guide.asp* and should reference Docket No. RD11–3.

34. Rather than creating entirely new obligations with respect to the assessment of transfer capability for the near-term transmission planning horizon, Reliability Standard FAC–013–2 upgrades the existing planning requirements contained in FAC–013–1 and specifically requires planning coordinators to have a methodology for and to perform an annual assessment identifying potential future transmission system weaknesses and limiting facilities that could impact the bulk electric system's ability to reliably transfer energy in the near-term transmission planning horizon. Thus, this Order does not impose entirely new burdens on the affected entities. For example, FAC–013–1 requires each applicable entity to have a documented methodology for assessing transfer capability and to share the results of that assessment with specific entities. FAC–013–2 imposes relatively minimal new requirements regarding the information that must be included in the documented methodology, the frequency of the assessment and the number of days allocated to make the assessment results available to other entities.

35. *Burden Estimate:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of August 29, 2011. According to the registry, there are 80 planning authorities[38] that will be involved in providing information. This Order will require applicable entities to review their transfer capability methodologies and document compliance with the Reliability Standard's requirements. For those planning coordinators that do not already comply with the Standard's requirement for having a documented methodology for assessing transfer capability in the Near-Term Transmission Planning Horizon, they will be required to update their methodology documents and compliance protocols. In addition, planning coordinators must ensure that the required assessment will be performed at least once per calendar year.[39] The estimated burden for the requirements in this Order follow:

[35] Order No. 729, 129 FERC ¶ 61,155, at P 292–93, 296 (noting, *inter alia,* that ERCOT does not have a transmission market and manages transmission congestion through redispatch of generation).

[36] ERCOT Comments at 7.

[37] 5 CFR 1320.11.

[38] The term ''planning coordinator'' is synonymous with the term ''planning authority,'' in the NERC Glossary.

[39] While the document retention requirements are being increased under the new Reliability Standard (from one to three years), the usual and customary practice currently is to retain documentation needed to demonstrate compliance for the period since the last audit, which is on a three year schedule. In addition, while planning coordinators must ensure that they perform an appropriate transfer capability assessment at least once per year, they are already required to establish transfer capabilities and disseminate information about those capabilities. Thus, there should be no increase in burden other than the one-time cost of (1) setting up a procedure to ensure that the assessment will be performed at least once per year, and (2) adjusting the methodology (if needed) to

Continued

| Data collection | Number of respondents | Number of responses per respondent | Hours per respondent per response | Total annual hours |
|---|---|---|---|---|
| | (A) | (B) | (C) | (A × B × C) |
| Review and possible revision of methodology (one-time) | [40] 20 | 1 | 80 | 1,600 |
| Procedure to perform the Transfer Capability Assessment annually (one-time) | 80 | 1 | 80 | 6,400 |
| Total | | | | 8,000 |

*Information Collection Costs:* The Commission seeks comments on the costs to comply with these requirements and recordkeeping burden associated with Reliability Standard FAC–013–2.

- *Total Burden Hours for Collection:* (Compliance/Documentation) = 8,000 hours.
- *Burden Hours Averaged Over Three Years*[41] *= 2,667.*
- *Total One-Time Compliance Cost* = 8,000 hours @ $120/hour = $960,000.
- *Total First Year Cost* = $960,000.
- *Title:* Order Approving Reliability Standard.
- *Action:* Proposed Collection in FERC–725A.
- *OMB Control No:* 1902–0244.
- *Respondents:* Business or other for profit, and/or not for profit institutions.
- *Frequency of Responses:* On occasion.
- *Necessity of the Information:* Reliability Standard FAC–013–2 satisfies certain directives the Commission issued in Order No. 729 requiring applicable entities to specify the framework used for calculating transfer capabilities in the Near-Term Transmission Planning Horizon and to ensure that the framework is consistent with the processes and criteria used for other operating and planning purposes. It also requires some entities to update their Transfer Capability methodology documents and procedures to perform assessments annually.

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

**VI. Effective Date**

37. This order will become effective January 23, 2012.

*The Commission orders:*

(A) Reliability Standard FAC–013–2 is hereby approved as just, reasonable, not unduly discriminatory, and in the public interest.

(B) NERC's addition of the terms ''Year One'' and ''Near-Term Transmission Planning Horizon'' to the NERC Glossary is hereby approved.

(C) NERC's proposed implementation plan for Reliability Standard FAC–013–2 is hereby approved, including the retirement of existing Reliability Standards FAC–012–1 and FAC–013–1 upon the effective date of Reliability Standard FAC–013–2.

(D) The VRF levels and VSL levels proposed for FAC–013–2 are approved with the exceptions discussed above, and NERC is directed to submit a compliance filing within 60 days of this order addressing the Commission's stated concerns with respect to the VRF levels of R1 and R4 and the VSL language of R1.

By the Commission. Commissioner Spitzer is not participating.

Dated: Issued November 17, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–30116 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14306–000]**

### The City of East Providence; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 14, 2011, The City of East Providence filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Hunt's Mill Dam Hydropower Project (Hunt's Mill Dam Project or project) to be located on Ten Mile River, in the City of East Providence, Providence County, Rhode Island. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) The existing 175-foot-long Hunt's Mill dam, which is owned by the City of East Providence, Rhode Island and includes a 125-foot-long, 10-foot-high curved stone masonry spillway; (2) an existing 32 acre impoundment with 140 acre-feet of storage capacity at elevation 33.5 feet NAVD 88; (3) a newly constructed or refurbished powerhouse; (4) a new or refurbished vertical Francis turbine/generator with total hydraulic capacity of 100 cubic feet per second (cfs) and total installed generating capacity of 0.3 megawatts connected to a rehabilitated or new penstock; (5) a rehabilitated intake, with new downstream fish protection measures; (6) an existing 900-foot-long open tailrace channel; (7) an existing switchyard with interconnected transmission line located at the existing powerhouse; and (8) appurtenant facilities. The estimated annual generation of the Hunt's Mill Dam Project would be 0.85 gigawatt-hours (GWH).

*Applicant Contact:* Mr. Jonathan Petrillo, Agent, The Essex Partnership, LLC, 27 Vaughan Ave., Newport, RI 02840; *phone:* (401) 619–4872.

*FERC Contact:* John Ramer; *phone:* (202) 502–8969.

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

comply with the more specific requirements set out in the new Reliability Standard.

[40] Requirement R1 applies to planning coordinators. We estimate that 25 percent of all planning coordinators will have to update their methodology documents.

[41] While this is a one-time burden, information collections tend to be on a three year approval cycle. Therefore, we are averaging the one-time burden estimate over three years.

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–14306–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30123 Filed 11–21–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. AD12–5–000]**

### Voltage Coordination on High Voltage Grids; Notice of Reliability Workshop Agenda

As announced in the Notice of Staff Workshop issued on November 8, 2011, the Commission will hold a workshop on Thursday, December 1, 2011, from 9 a.m. to 4:30 p.m. to explore the interaction between voltage control, reliability, and economic dispatch. In addition, the Commission will consider how improvements to dispatch and voltage control software could improve reliability and market efficiency. This event will consist of two panels of industry participants. The first panel will address how entities currently coordinate economic dispatch and voltage control. The second panel will address the capability of existing and emerging software to improve coordination and optimization of the Bulk-Power System from a reliability and economic perspective. The agenda for this workshop is attached. Members of the Commission may attend the workshop.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–(866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

**Staff Workshop on Voltage Coordination on High Voltage Grids**

*December 1, 2011*

*9 a.m.–4:30 p.m.*

Agenda

9–9:15 a.m.—Greeting and Opening Remarks by David Andrejcak.

9:15–11:30 a.m.—Current approaches and challenges to analyzing voltage support and reactive margin during operations planning and real-time.

*Presentations:* Panelists will be asked to describe how their companies currently coordinate the dispatch of reactive resources to support forecasted loads, generation and interchange transactions during operations planning and real-time. Panelists should address the following in their presentations:

a. Describe the pre-scheduling and real-time processes that involve the commitment or dispatch of reactive resources from a *reliability* perspective. What applications or tools are used to evaluate reactive or voltage support needs from this perspective?

b. Describe the pre-scheduling and real-time processes that involve the commitment or dispatch of reactive resources from an *economic* perspective. What applications or tools are used to evaluate reactive or voltage support needs from this perspective?

c. Explain whether and how pre-scheduling, real-time and post analysis evaluations are performed on the bulk electric system or on lower voltage systems to maximize opportunities for additional reliability or economic transactions.

d. Describe the situations where the dispatch of reactive resources may limit System Operating Limits or whether and how more transactions could be supported.

e. Describe how reactive power needs of the distribution system or loads are coordinated or optimized.

*Panelists:*

- Khaled Abdul-Rahman, California Independent System Operator
- Xiaochuan Luo, ISO New England
- Wes Yeomans, New York Independent System Operator
- Dave Zwergel, Midwest ISO
- Chantal Hendrzak, PJM Interconnection
- Bruce Rew, Southwest Power Pool

11:30 a.m.–1 p.m.—Lunch Break.

1–4 p.m.—The next generation of voltage support and reactive margin applications used during operations planning and real-time.

*Presentations:* Panelists will be asked to describe capabilities of the present and anticipated future software that can be used as decision tools to help system operators optimize voltage support resources to preserve and protect

reliability and support market-based economic transactions. Panelists should address the following in their presentations:

a. What are the objectives of software products available to industry that optimize the system for operations planning and real-time? (Minimize losses, maximize transfer capability, and/or minimize production costs?)

b. Describe the system optimization software products currently used or tested in industry. Discuss how widely these are used in industry.

c. Describe how these software products are evaluated and validated using a post analysis process.

d. What effort is involved in implementing the application for use in industry?

e. Discuss whether the application can be used on an interconnection-wide, Balancing Authority or local distribution system basis and, if so, how the application would be utilized.

f. Discuss whether the applications can be used to optimize reactive power resources in the distribution system or loads and coordinate with higher voltage systems.

*Panelists:*

- Kedall Demaree, Alstom
- Rod Sulte, GE
- Soorya Kuloor, Gridiant
- Marija Ilic, New Electricity Transmission Software Solutions (NETSS)
- Dan French, Siemens

4:00–4:30 p.m.—Summary Remarks by David Andrejcak.

[FR Doc. 2011–30125 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP12–13–000]**

### Equitrans, LP; Notice of Request Under Blanket Authorization

Take notice that on November 3, 2011, Equitrans, LP (Equitrans), 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, filed in Docket No. CP12–13–000, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to construct and operate the Blacksville Compressor Station Project in Monongalia County, West Virginia. Specifically, Equitrans proposes to construct and operate two 4,735 horsepower compressor units at the new Blacksville Compressor Station. The project will provide an additional 209,000 dekatherms (dth) per day of new firm transportation capacity on Equitrans' system. Equitrans states that it has entered into precedent agreements for approximately 50,000 dth per day and anticipates entering into additional precedent agreements for up to another 150,000 dth per day, all as more fully set forth in the application which is on file with the Commission and open to public 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 this Application should be directed to Paul W. Diehl, Senior Counsel—Midstream, EQT Corporation, 625 Liberty Avenue, Suite 1700, Pittsburgh, Pennsylvania 15222, or call (412) 395–5540, or fax (412) 553–7781, or by email *PDiehl@eqt.com.*

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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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.

Dated: November 16, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–30126 Filed 11–21–11; 8:45 am]

**BILLING CODE 6717–01–P**

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Renewal of Advisory Committee Charter

**ACTION:** Notice of Renewal of the Advisory Committee Charter of the Export Import Bank.

**SUMMARY:** In compliance with mandate of Section 3(d)(4) of the Export Import Bank Act of 1945, as amended, the Agency announces the renewal of the Export Import Bank Advisory Committee. The committee will advise the Bank's leadership and shall prepare and submit with the Bank's annual competitiveness report to the U.S. Congress its comments on the extent to which the Bank is meeting its mandate to provide competitive financing to expand United States exports, and any suggestions for improvements in this regard.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Authority

The Advisory Committee was established as a non-discretionary committee pursuant to Section 3(d)(4). The current Charter of the Advisory Committee is scheduled to expire on November 3, 2011.

### II. Structure

The Committee shall consist of 17 members appointed by the Bank's Board of Directors on the recommendation of the President and Chairman of the Bank. Such members shall be broadly representative of the following constituencies: environment, production, commerce, finance, agriculture, labor, services, and State government, with not less than three members being representative of the small business community, not less than two members being representative of the labor community, and not less than two members being representative of the

environmental nongovernmental organization community.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact: Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (Number (202) 565–3336).

**Lisa V. Terry,**

*Assistant General Counsel (Acting).*

[FR Doc. 2011–29094 Filed 11–21–11; 8:45 am]

**BILLING CODE 6690–01–M**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and Request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens and as required by the Paperwork Reduction Act of 1995, Public Law 104–13, the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

**DATES:** Persons wishing to comment on this information collection should submit comments January 23, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicolas A. Fraser, Office of Management and Budget (OMB), via fax at (202) 395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov,* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC). To submit your comments by email send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), contact Judith B. Herman at (202) 418–0214.

**SUPPLEMENTARY INFORMATION:** *OMB Control No.:* 3060–1124.

*Title:* Section 80.231, Technical Requirements for Class B Automatic Identification System (AIS) Equipment.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 20 respondents; 20 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. sections 151 through 155 and 301–309.

*Total Annual Burden:* 20 hours.

*Annual Cost Burden:* $28,000.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission is seeking Office of Management and Budget (OMB) approval for an extension of this information collection (no change in the reporting requirements and/or third party disclosure requirements). The Commission will submit this information collection after this 60 day comment period. There is no change in the Commission's previous burden estimates.

Section 80.231 requires that manufacturers of Class B Automatic Identification Systems (AIS) transmitters for the Marine Radio Service include with each transmitting device a statement explaining how to enter static information accurately and a warning statement that entering inaccurate information is prohibited. Specifically, this rule section requires that manufacturers of AIS transmitters label each transmitting device with the following statement:

WARNNING: It is a violation of the rules of the Federal Communications Commission to input a MMSI that has not been properly assigned to an end user, or to otherwise input any inaccurate data in this device.

Additionally, prior to submitting a certification application (FCC Form 731, OMB Control Number 3060–0057) for a Class B AIS device, the following information must be submitted in duplicate to the Commandant (CG–521), U.S. Coast Guard, 2100 2nd Street, SW., Washington, DC 20593–0001:

(1) The name of the manufacturer or grantee and the model number of the AIS device; and

(2) Copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in IEC 62287–1.

After reviewing the information described in the certification application, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in IEC 62287–1. A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in IEC 62287–1, a copy of the technical data and the instruction manual(s).

Federal Communications Commission.

**Marlene H. Dortch,**

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

[FR Doc. 2011–30120 Filed 11–21–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 7, 2011.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Samuel T. Sicard, individually and as trustee of the Samuel M. Sicard Living Trust,* Fort Smith, Arkansas; to retain ownership of First Bank Corp., and thereby indirectly retain ownership of The First National Bank of Fort Smith, both in Fort Smith, Arkansas.

Board of Governors of the Federal Reserve System, November 17, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–30106 Filed 11–21–11; 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 December 16, 2011.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *American Start-Up Financial Institutions Investments, I, L.P., and CKH Capital, Inc.,* both in Monterey Park, California; to become bank holding companies by acquiring up to 62 percent of the voting shares of New Omni Bank, National Association, Alhambra, California.

In connection with this application, Applicants also have applied to retain 5.9 percent interest of the voting shares of First PacTrust Bancorp, Inc., and thereby indirectly retain Pacific Trust Bank, both in Chula Vista, California, and engage in operating as savings and loan association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–30105 Filed 11–21–11; 8:45 am]

**BILLING CODE 6210–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–12–12AM]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call (404) 639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01)—New—National Center for Environmental Health (NCEH) and Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The Navajo Nation includes 16 million acres of New Mexico, Utah and Arizona. It is the largest Alaska Native/American Indian Reservation in the United States. From 1948 to 1986, many uranium mining and milling operations took place in the Navajo Nation, leaving a large amount of uranium contamination on the reservation. Several studies have reported that uranium mostly damages the kidneys and urinary system. However, there is not much research data on uranium exposure and poor birth and reproductive health outcomes. Research involving prenatal exposure to uranium may help to understand and prevent some unfavorable child and maternal health outcomes.

There are important health differences concerning birth outcomes and prenatal care in the Navajo Nation. According to the Indian Health Service *Regional Differences in Indian Health 2002–2003 Edition,* the infant death rate among the Navajo people is 8.5 deaths per 1000 live births, compared to 6.9 deaths per 1000 live births among all races. Only 61% of Navajo mothers with live births received prenatal care in the first trimester as compared to 83% of all U.S. mothers. Early and regular prenatal care is a major predicator of positive birth outcomes. Due to the health differences in birth outcomes and the chance for environmental uranium exposure in the Navajo Nation, ATSDR decided that the upcoming study must include education of women and their families about the importance of prenatal care and the potential poor health risks associated with exposure to uranium.

The House Committee on Oversight and Government Reform requested that federal agencies develop a plan to address health and environmental impacts of uranium contamination in the Navajo Nation. As a result of this request, ATSDR awarded a research cooperative agreement to University of New Mexico Community Environmental Health Program (UNM–CEHP) entitled ''A Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01),'' in August 2010. ATSDR and UNM–CEHP are working with the Navajo Area Indian Health Service (NAIHS), Navajo Nation Division of Health (NNDOH), Navajo Nation Environmental Protection Agency (NNEPA), and Navajo culture

and language specialists to carry out the study. The study will examine reproductive outcomes in pregnant women, follow and assess their children from birth to 1 year of age, and create a system to follow up the infants through childhood up to 6 years of age to evaluate the impact of uranium exposure on biological and psychosocial endpoints. Biological sample analysis, surveys, and developmental screenings will be performed during this research period for each participant.

In addition to investigating the role of uranium and other chemicals in the environment on birth outcomes and development, the prospective study may aid in understanding causes and prevention measures of chronic conditions. Several research studies have shown that exposure to chemicals in the environment during prenatal and postnatal periods can affect the development of adult chronic diseases. The study will also provide broad public health benefits for Navajo communities through outreach and education on environmental prenatal risks and early assessment. Referrals will also be provided for known developmental delays.

Participants will include Native American mothers from age 14 to 45 with verification of pregnancy who have lived in the study area for at least 5 years. Also, participants must consent to receive prenatal care and deliver at one of the healthcare facilities that are taking part in the study (Northern Navajo Medical Center, Chinle Comprehensive Health Care Facility, Gallup Indian Medical Center, Tuba City Regional Health-Care Corporation, or Tséhootsooí Medical Center). Fathers will be included in the study with consent regardless of age or residence. We estimate that 550 pregnant women and fathers per year must be enrolled in the study to obtain adequate statistical power. A 10% pregnancy loss will be assumed, which would result in 500 live births per year. Therefore, the total anticipated sample size is 1,500 mother-infant pairs over the three years of the study.

The survey instruments for pregnant mothers include the following: Enrollment Survey, Nutritional Assessment/Food Intake Questionnaire, Ages and Stages Questionnaire (ASQ–I), Mullen Stages of Early Development (MSEL), and Postpartum Surveys. An enrollment survey for fathers who agree to participate will also be administered. Community Health and Environmental Research Specialists (CHERS) will administer surveys using a CDC-approved electronic data entry system. Survey instruments were designed to collect demographic information, assess potential environmental health risks, and mother-child interactions. The survey instruments were developed based on previous surveys conducted by Dine' Network for Environmental Health (DiNEH) Project, the National Children's Study, and by other birth cohort studies that have been conducted among other indigenous populations. The final format of the survey instruments was modified based on review and input from the Navajo Nation community liaison group and associated Navajo staff to address issues such as cultural sensitivity, comprehension and language translation.

There is no cost to the respondents other than their time to participate in the study. The total estimated annual burden hours equals 3550.

*Estimated Annualized Burden Hours*

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average burden response (hours) | Total burden (hours) |
|---|---|---|---|---|---|
| Mother | Enrollment Survey | 550 | 1 | 2 | 1100 |
| | Ages and Stages Questionnaire (2,6,9 12 months). | 500 | 4 | 15/60 | 500 |
| | Mullen Stages of Early Development | 500 | 1 | 15/60 | 125 |
| | Postpartum Survey (0 months) | 500 | 1 | 1 | 500 |
| | Post-partum Survey (2, 6, 9, 12 months). | 500 | 4 | 15/60 | 500 |
| Father | Enrollment Survey | 550 | 1 | 90/60 | 825 |
| Total | | | | | 3550 |

Dated: November 16, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–30103 Filed 11–21–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; *telephone:* (301) 496–7057; *fax:* (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Medical Device for Intraocular Injection of Therapeutics and Fluid Sampling**

*Description of Technology:* The National Institutes of Health seeks research collaboration and commercialization partners for a medical device for administering therapeutics into the eye to treat a variety of ocular diseases including diabetic retinopathy, retinal vein occlusion, and macular degeneration. The device is a dual function needle that can both inject and sample ocular fluid at the same injection site. The needle includes a hub portion in communication with a needle portion through a lumen that may be used as a conduit to inject a therapeutic into an injection site. A sample chamber, with an optional absorbent material, is

disposed in the lumen capable of absorbing intraocular fluid via a passive filling action into the sample chamber.

*Potential Commercial Applications:*
- Ocular therapeutics
- Macular degeneration
- Diabetic retinopathy
- Retinal vein occlusion

*Competitive Advantages:*
- Small sample volumes
- Disposable
- Personalized medicine

*Development Stage:*
- Prototype
- Early-stage

*Inventors:* Henry E. Wiley (NEI), Terrence M. Philips (NIBIB), Fredrick L. Ferris (NEI), Heather Kalish (NIBIB).

*Intellectual Property:* HHS Reference No. E–233–2010/0—U.S. Provisional Patent Application No. 61/533,908 filed September 13, 2011.

*Licensing Contact:* Michael Shmilovich, Esq.; (301) 435–5019; *mish@codon.nih.gov.*

*Collaborative Research Opportunity:* The National Eye Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize intraocular therapeutic delivery. For collaboration opportunities, please contact Alan E. Hubbs, Ph.D. at (301) 594–4263 or *hubbsa@mail.nih.gov.*

**Bacteria/Biofilm Resistant Implantable Medical Device**

*Description of Technology:* Available for licensing and commercial development is a medical device resistant to a biological barrier such as a bacterial biofilm, fibrin sheath, and/or clot formation. An electric current is introduced through an electrically conductive surface of the device (e.g., a catheter) on which a biofilm, fibrin sheath, or clot may form to inhibit formation. The electrically conductive surface can extend along an entire surface of the device (for example extending entirely from the proximal to distal end of a catheter), or a portion thereof such as at the tip.

*Potential Commercial Applications:*
- Biofilm resistant medical devices
- Antimicrobial methods
- Antimicrobial protection of implanted medical device
- Vascular access devices

*Competitive Advantages:* Non-degradable antimicrobial methods.

*Development Stage:*
- Prototype
- Early-stage

*Inventors:* Bradford Wood and Ziv Neeman (NIHCC).

*Intellectual Property:* HHS Reference No. E–078–2005—U.S. Provisional Patent Application 61/501,065 filed June 24, 2011.

*Licensing Contact:* Michael Shmilovich, Esq.; (301) 435–5019; *mish@codon.nih.gov.*

Dated: November 16, 2011.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2011–30109 Filed 11–21–11; 8:45 am]

**BILLING CODE 4140–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Program Project: Mitosis and Meiosis.

*Date:* December 13–14, 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:* Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 435–1236, *smirnove@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: November 15, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–30118 Filed 11–21–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Psychomotor Behavior After Chemotherapy.

*Date:* November 30, 2011.

*Time:* 12:30 p.m. to 2 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:* Biao Tian, Ph.D., 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Review of HIV/AIDS Clinical Studies and Epidemiology Grant Applications.

*Date:* December 9, 2011.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–1775, *rubertm@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Studies in Prevention and Health Disparites HIV/AIDS.

*Date:* December 14–15, 2011.

*Time:* 10 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Robert Freund, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Dermatology.

*Date:* December 19, 2011.

*Time:* 2 p.m. to 6 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:* Jean D. Sipe, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@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: November 16, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–30101 Filed 11–21–11; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Predoctoral Training in Cardiovascular Research.

*Date:* December 15, 2011.

*Time:* 1 p.m. to 2 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:* Stephanie L Constant, Ph.D., 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: November 16, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–30099 Filed 11–21–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### Agency Information Collection Activities: Form N–300; Revision of an Existing Information Collection; Comment Request

**ACTION:** Notice.

* * * * *

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 24, 2011 at 76 FR 52961, allowing for a 60-day public comment period. USCIS received two comments in connection with that notice, which informed the public that USCIS will be requesting revision of this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until December 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Office, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *uscisfrcomment@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at (202) 395–5806 or via email at *oira_submission@omb.eop.gov*. Please do not submit requests for individual case status inquiries to these addresses. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at *https://egov.uscis.gov/cris/Dashboard*, or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1 (800) 767–1833).

When submitting comments by email please make sure to add OMB Control Number 1615–0078 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application to File Declaration of Intention.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–300; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–300 will be used by permanent residents to file a declaration of intention to become a citizen of the United States. This collection is also used to satisfy documentary requirements for those seeking to work in certain occupations

or professions, or to obtain various licenses.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 85 responses at .75 hours (45 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 64 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: *November 15, 2011.*

**Sunday Aigbe,**

*Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.*

[FR Doc. 2011–29915 Filed 11–21–11; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOMELAND SECURITY

### United States Immigration and Customs Enforcement

### Agency Information Collection Activities: Extension of an Information Collection; Comment Request

**ACTION:** 30-Day Notice of Information Collection Under Review; Electronic Bonds Online (eBonds) Access.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), is submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 30, 2011, Vol. 76 No. 168, pp 53930, allowing for a 60 day comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until December 21, 2011.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Electronic Bonds Online (eBonds) Access; OMB Control No. 1653–0046.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–352SA; I–352RA, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other non-profit. The information taken in this collection is necessary for ICE to grant access to eBonds and to notify the public of the duties and responsibilities associated with accessing eBonds. The I–352SA and the I–352RA are the two instruments used to collect the information associated with this collection. The I–352SA is to be completed by a Surety that currently holds a Certificate of Authority to act as a Surety on Federal bonds and details the requirements for accessing eBonds as well as the documentation, in addition to the I–352SA and I–352RA, which the Surety must submit prior to being granted access to eBonds. The I–352RA provides notification that eBonds is a Federal government computer system and as such users must abide by certain conduct guidelines to access eBonds and the consequences if such guidelines are not followed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: John Ramsay, Program Manager, Records Management Branch, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Room 3138, Washington, DC 20024; (202) 732–6337.

November 10, 2011.

**John Ramsay,**

*Program Manager, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.*

[FR Doc. 2011–30065 Filed 11–21–11; 8:45 am]

**BILLING CODE 9111–28–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5481–N–20]**

### Notice of Proposed Information Collection: Comment Request Congressional Earmark Grants

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, 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.

The Department's Congressional Grants Division administers congressionally mandated grants, known as earmarks. These projects have been identified in the annual appropriation of funds to the Department and in the accompanying conference reports or congressional record accompanying each appropriation. Earmarks generally fall into two categories: Economic

Development Initiative-Special Project (EDI–SP) and Neighborhood Initiative (NI) grants.

**DATES:** *Comments Due Date: January 23, 2012.*

**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:** Frank McNally, Director, Congressional Grants Division, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–7100 (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:* Congressional Earmark Grants.

*OMB Control Number, if applicable:* 2506–0179.

*Description of the need for the information and proposed use:* HUD's Congressional Grants Division and its Environmental Officers in the field use this information to make funds available to entities directed to receive funds appropriated by Congress. This information is used to collect, receive, review and monitor program activities through applications, semi-annual and close-out reports. The information that is collected is used to assess performance. Grantees are units of state and local government, nonprofits and Indian tribes. Respondents are initially identified by Congress and generally fall into two categories: Economic Development Initiative-Special Project (EDI–SP) grantees and Neighborhood Initiative (NI) grantees. The agency has used the application, semi-annual reports and close-out reports to track grantee performance in the implementation of approved projects.

*Agency form numbers, if applicable:* SF–424; SF–LLL; SF–1199A; HUD–27054; SF–425; HUD–27056.

*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 2,000. The number of respondents is 2,000, the number of responses is 4,000, the frequency of response is on occasion, and the burden hour per response is 4.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: October 24, 2011.

**Valerie G. Piper,**

*Deputy Assistant Secretary for Economic Development.*

[FR Doc. 2011–30133 Filed 11–21–11; 8:45 am]

BILLING CODE 4210–67–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5481–N–19]**

## Notice of Proposed Information Collection: Comment Request, HUD-Administered Small Cities Program Performance Assessment Report

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, 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:* January 23, 2012.

**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: William Kelleher, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Room 7233, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Eva Fontheim at (202) 402–3461 (this is not a toll free number) for copies of the proposed forms and other available documents:

**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 affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* HUD-Administered Small Cities Program Performance Assessment Report.

*OMB Control Number, if applicable:* 2506–0020.

*Description of the need for the information and proposed use:* The information collected from grant recipients participating in the HUD-administered CDBG program provides HUD with financial and physical development status of each activity funded. These reports are used to determine grant recipient performance.

*Agency form numbers, if applicable:* The Housing and Community Development Act of 1974, as amended, requires grant recipients that receive CDBG funding to submit a Performance Assessment Report (PAR), Form 4052, on an annual basis to report on program progress; and such records as may be necessary to facilitate review and audit by HUD of the grantee's administration of CDBG funds (Section 104(e)(1)).

*Members of affected public:* This information collection applies solely to local governments in New York State that have HUD-administered CDBG

grants that remain open or continue to generate program income.

*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 estimated number of respondents is 40. The proposed frequency of the response to the collection of information is annual. Annual recordkeeping is estimated at 160 hours for approximately 40 grant recipients.

*Status of the proposed information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired, and a request for OMB renewal for three years. The current OMB approval will expire in October, 2011.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 16, 2011.

**Yolanda Chávez,**

*Deputy Assistant Secretary For Grant Programs.*

[FR Doc. 2011–30139 Filed 11–21–11; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[F–14920–A; LLAK965000–L14100000–KC0000–P]**

## Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Decision Approving Lands for Conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Arviq Incorporated. The decision approves only the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate of these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Arviq Incorporated. The lands are in the vicinity of Platinum, Alaska, and located in:

**Seward Meridian, Alaska**

T. 13 S., R. 75 W.,
Secs. 19 and 30.
Containing 27.54 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

**DATES:** Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 22, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION, CONTACT:** The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@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 BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

**Charmain McMillan,**

*Land Law Examiner, Land Transfer Adjudication II Branch.*

[FR Doc. 2011–30097 Filed 11–21–11; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[LLOR957000–L63200000–HD0000: HAG12–0039]**

## Filing of Plats of Survey: Oregon/Washington

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

**Willamette Meridian, Oregon**

T. 17 S., R. 7 W., accepted October 21, 2011
T. 18 S., R. 8 W., accepted October 21, 2011

**ADDRESSES:** A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

**FOR FURTHER INFORMATION CONTACT:** Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Mary J.M. Hartel,**

*Chief, Cadastral Surveyor of Oregon/Washington.*

[FR Doc. 2011–30102 Filed 11–21–11; 8:45 am]

**BILLING CODE 4310–33–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–671–673 (Third Review)]**

## Silicomanganese From Brazil, China, and Ukraine; Notice of Commission determinations To Conduct Full Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of

the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on silicomanganese from Brazil, China, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews 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), as amended, 76 FR 61937 (October 6, 2011).

**DATES:** *Effective Date:* November 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer ((202) 205–3193), 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** On November 4, 2011, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (76 FR 45856, August 1, 2011) was adequate and that the respondent interested party group responses with respect to Brazil and Ukraine were adequate, and decided to conduct full reviews of the antidumping duty orders on silicomanganese from Brazil and Ukraine. The Commission found that the respondent interested party group response with respect to China was inadequate. However, the Commission determined to conduct a full review concerning the order on silicomanganese from China to promote administrative efficiency in light of its decision to conduct full reviews with respect to Brazil and Ukraine. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**Authority:** These reviews are 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: November 16, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30036 Filed 11–21–11; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–344 (Third Review)]**

## Tapered Roller Bearings From China; Notice of Commission determination To Conduct a Full Five-Year Review

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice

**SUMMARY:** The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on tapered roller bearings from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. 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), as amended, 76 FR 61937 (October 6, 2011).

**DATES:** *Effective Date:* November 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202) 205–3193), 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:** On November 4, 2011, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act.[1] The Commission found that both the domestic and respondent interested party group responses to its notice of institution (76 FR 45853, August 1, 2011) were adequate.[2] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**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: November 16, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30040 Filed 11–21–11; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–442–443 and 731–TA–1095–1097 (Review)]**

## Certain Lined Paper School Supplies From China, India, and Indonesia; Notice of Commission Determinations To Conduct Full Five-Year Reviews

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on certain lined paper school supplies from India and Indonesia and the antidumping duty orders on certain lined paper school supplies from China, India, and Indonesia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further

[1] Chairman Deanna Tanner Okun did not participate.

[2] Commissioner Charlotte R. Lane dissented from the majority, instead finding that the respondent interested party group response was inadequate and determining to proceed to an expedited review.

information concerning the conduct of these reviews 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), as amended, 76 FR 61937 (October 6, 2011).

**DATES:** *Effective Date:* November 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202) 205–3193, 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 these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:** On November 4, 2011, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (76 FR 45851, August 1, 2011) was adequate and that the respondent interested party group response with respect to the orders on subject merchandise from India was adequate, and decided to conduct full reviews of the antidumping and countervailing duty orders on certain lined paper school supplies from India. The Commission found that the respondent interested party group responses with respect to the orders on subject merchandise from China and Indonesia were inadequate. However, the Commission determined to conduct full reviews concerning the orders on certain lined paper school supplies from China and Indonesia to promote administrative efficiency in light of its decision to conduct full reviews with respect to the orders on subject merchandise from India.[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

**Authority:** These reviews are 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: November 16, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30039 Filed 11–21–11; 8:45 am]

**BILLING CODE 7020–02–P**

[1] Commissioner Charlotte R. Lane dissented, instead finding that the respondent interested party group response with respect to India was inadequate and determining to conduct expedited reviews of all orders concerning certain lined paper school supplies from China, India, and Indonesia.

## INTERNATIONAL TRADE COMMISSION

**[DN 2855]**

### Certain Semiconductor Chips with DRAM Circuitry, and Modules and Products Containing Same Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Semiconductor Chips with DRAM Circuitry, and Modules and Products Containing Same,* DN 2855; the Commission is soliciting comments on any public interest issues raised by the complaint.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint filed on behalf of Elpida Memory, Inc. and Elpida Memory (USA) Inc. on November 15, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor chips with dram circuitry, and modules and products containing same. The complaint names Nanya Technology Corporation of Taiwan and Nanya Technology Corporation, U.S.A. of Santa Clara, CA, as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2855'') in a prominent place on the cover page and/or the first page. The

Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*. Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: November 15, 2011.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30037 Filed 11–21–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[DN 2856]**

## Certain Products Containing Interactive Program Guide and Parental Controls Technology; Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Products Containing Interactive Program Guide and Parental Controls Technology,* DN 2856; the Commission is soliciting comments on any public interest issues raised by the complaint.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint filed on behalf of Rovi Corporation, Rovi Guides, Inc. (f/k/a Gemstar-TV Guide International Inc., United Video Properties, Inc., Gemstar Development Corporation, and Index System Inc. on November 15, 2011. The complaints allege violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain products containing interactive program guide and parental controls technology. The complaint names Vizio, Inc. of Irvine, CA; Haier Group Corp. of China; and Haier America Trading, LLC of New York, NY, as respondents.

The complainants, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainants, Complainants' licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2856'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*. Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: November 16, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–30038 Filed 11–21–11; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSITCE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Notice is hereby given that on November 15, 2011, a proposed Consent Decree (''proposed Decree'') in *United States* v. *Occidental Chemical Corporation, et al,* Civil Action No. 11–CV–7149 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) (''CERCLA''), the United States sought reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Occidental Chemical Corporation Superfund Site located in Lower Pottsgrove Township, Montgomery County, Pennsylvania. The proposed Decree requires Settling Defendants to pay $2,130,600.88 to the United States in reimbursement of past response costs. The proposed Decree also requires the Performing Settling Defendants to pay all future response costs and continue to perform the work for operable unit 2 at the Site, which is the final operable unit to be remediated under the 1993 Record of Decision.

The proposed Decree provides the Settling Defendants with a covenant not to sue under Section 107(a) of CERCLA, 42 U.S.C. 9607(a) for past response costs and a covenant not to sue for future response costs to Performing Settling Defendants only.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emails to emailed 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. *Occidental Chemical Corporation, et al.,* D.J. Ref. 90–11–2–913/1.

During the public comment period, the proposed Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed 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 emailing 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 $8.00 (.25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, please forward a check in that amount to the Consent Decree Library at the stated address.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–30054 Filed 11–21–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Consistent with Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on November 7, 2011, a proposed Consent Decree in *The General Electric Company and United Nuclear Corporation* v. *United States of America,* Civil Action No. 1:10–cv–404 MCA/RHS, was lodged with the United States District Court for the District of New Mexico.

In this action the United States filed a counterclaim seeking to recover past and future costs incurred and to be incurred by the Environmental Protection Agency (EPA) during the performance of response actions at the Northeast Church Rock Mine Superfund Site in McKinley County, New Mexico.

Under the Consent Decree, the Defendant United Nuclear Corporation will reimburse the Hazardous Substance Superfund in the amount of $1,905,166.60 for EPA's response costs at the Site incurred through July 31, 2010 and interest incurred through May 5, 2011.

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 emailed 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 *The General Electric Company and United Nuclear Corporation* v. *United States of America,* Civil Action No. 1:10–cv–404 MCA/RHS (D. N.M.), DOJ Ref. # 90–11–3–10077.

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 emailing 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 refer to *The General Electric Company and United Nuclear Corporation* v. *United States of America,* Civil Action No. 1:10–cv–404 MCA/RHS (D. N.M.), DOJ Ref. # 90–11–3–10077, and enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

**Henry S. Friedman,**

*Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.*

[FR Doc. 2011–30131 Filed 11–21–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0059]**

### Occupational Exposure to Hazardous Chemicals in Laboratories Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the Standard on Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450).

**DATES:** Comments must be submitted (postmarked, sent, or received) by January 23, 2012.

**ADDRESSES:** *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Facsimile:* If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger, or courier service:* When using this method, you must submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2011–0059, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and OSHA docket number (OSHA–2011–0059) for the Information Collection Request (ICR). All comments including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You also may contact Theda Kenney at the address below to obtain a copy of the ICR.

**FOR FURTHER INFORMATION CONTACT:** Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard on Occupational Exposure to Hazardous Chemicals in Laboratories applies to laboratories that use hazardous chemicals in accordance with the Standard's definitions for ''laboratory use of hazardous chemicals'' and ''laboratory scale.'' The Standard requires that these laboratories maintain worker exposures at or below the permissible exposure limits specified for the hazardous chemicals in 29 CFR Part 1910, Subpart Z. They do so by developing a written Chemical Hygiene Plan (CHP) that describes standard operating procedures for using hazardous chemicals; hazard-control techniques; equipment-reliability measures; worker information-and-training programs; conditions under which the employer must approve operations, procedures, and activities before implementation; and medical consultations and examinations. The CHP also designates personnel responsible for implementing the CHP and specifies the procedures used to provide additional protection to workers exposed to particularly hazardous chemicals.

Other information collection requirements of the Standard include documenting exposure monitoring results; notifying workers in writing of these results; presenting specified information and training to workers; establishing a medical surveillance program for overexposed workers; providing required information to the physician; obtaining the physician's written opinion on using proper respiratory equipment; and establishing, maintaining, transferring, and disclosing exposure monitoring and medical records. These collection of information requirements, including the CHP, control worker overexposure to hazardous laboratory chemicals thereby preventing serious illnesses and death among workers exposed to such chemicals.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Standard on Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450). The Agency is proposing to increase its current burden hour estimate from 281,086 hours to 293,373 hours (an increase of 12,287 burden hours). This increase is primarily a result of an increase in the number of facilities being monitored.

*Type of Review:* Extension of a currently approved collection.

*Title:* Occupational Exposure to Hazardous Chemicals in Laboratories (29 CFR 1910.1450)

*OMB Number:* 1218–0131.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 48,461.

*Frequency:* Varies from 3 minutes (.05 hour) to replace the safe practice manual to 1 hour to develop a new manual.

*Total Responses:* 911,113.

*Average Time per Response:* Annually; monthly; quarterly; semi-annually; on occasion.

*Estimated Total Burden Hours:* 293,373.

*Estimated Cost (Operation and Maintenance*): $41,271,276.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for this ICR (Docket No. OSHA–2011–0059). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and docket number, so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

**V. Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 4–2010 (75 FR 55355).

Signed at Washington, DC, on November 17, 2011.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2011–30076 Filed 11–21–11; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (11–115)]**

## National Environmental Policy Act; NASA Routine Payloads on Expendable Launch Vehicles

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Finding of No Significant Impact (FONSI).

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA policy and procedures (14 CFR part 1216 subpart 1216.3), NASA has made a Finding of No Significant Impact (FONSI) with respect to the proposed launch of NASA Routine Payloads on expendable launch vehicles. The proposed launches would occur from existing launch facilities at Cape Canaveral Air Force Station (CCAFS), Florida, Vandenberg Air Force Base (VAFB), California, the United States Army Kwajalein Atoll/Reagan Test Site (USAKA/RTS) in the Republic of the Marshall Islands (RMI), NASA's Wallops Flight Facility (WFF), Virginia, and the Kodiak Launch Complex (KLC), Alaska.

This FONSI summarizes NASA's consideration of environmental impacts for routine payloads being launched at facilities addressed in the draft *Environmental Assessment (EA) for NASA Routine Payloads on Expendable Launch Vehicles dated August 2011.* The final EA updates the *Final Environmental Assessment for Launch of NASA Routine Payloads on Expendable Launch Vehicles from Cape Canaveral Air Force Station Florida and Vandenberg Air Force Base California* published in June 2002 (2002 NRP EA). The final EA and FONSI incorporate by reference the 2002 NRP EA. For completeness, much of the June 2002 NRP EA is restated in this final EA.

The Cooperating Agencies on this final EA include the Federal Aviation Administration, the Air Force Space and Missile System Center, the US Army Space and Missile Defense Command, and the National Oceanic and Atmosphere Administration.

**DATES:** Effective date is November 22, 2011.

**ADDRESSES:** The final Environmental Assessment (EA) that serves as the basis for this FONSI may be viewed at *http://www.nasa.gov/green/nepa/routinepayloadea.html* or at the following locations:

(a) NASA Headquarters, Library, Room 1J20, 300 E Street SW., Washington, DC 20546 ((202) 358–0167).

(b) Central Brevard Library and Reference Center, 308 Forrest Avenue, Cocoa, FL 32922 ((321) 633–1792).

(c) Jet Propulsion Laboratory, Visitors Lobby, Building 249, 4800 Oak Grove Drive, Pasadena, CA 91109 ((818) 354–5179).

(d) NASA, Goddard Space Flight Visitor's Center, 8463 Greenbelt Road, Greenbelt, MD 20771 ((301) 286–8981).

(e) Lompoc Public Library, 501 E. North Avenue, Lompoc, CA 93436 ((850) 875–8775).

(f) Santa Maria Public Library, 420 South Broadway, Santa Maria, CA 93454–5199 ((805) 925–0994).

(g) Government Information Center, Davidson Library, University of California, Santa Barbara, Santa Barbara, CA 93106–9010 ((805) 893–8803).

(h) Vandenberg Air Force Base Library, 100 Community Loop, Building 10343A, Vandenberg AFB, CA 93437 ((805) 606–6414).

(i) Chincoteague Island Library, 4077 Main Street, Chincoteague, VA 23336 ((757) 336–3460).

(j) NASA WFF Technical Library, Building E–105, Wallops Island, VA 23337 ((757) 824–1065).

(k) Eastern Shore Public Library, 23610 Front Street, Accomac, VA 23301 ((757) 787–3400).

(l) Kodiak Library, 319 Lower Mill Bay Road, Kodiak, AK 99615 ((907) 486–8680).

(m) NASA, Ames Research Center, Moffett Field, CA 94035 ((650) 604–3273).

(n) Grace Sherwood and Roi-Namur Libraries, P.O. Box 23, Kwajalein, Marshall Islands APO, A.P. 96555 ((805) 355–2015).

(o) Alele Public Library, P.O. Box 629, Majuro, Republic of the Marshall Islands 96960. ((692) 625–3372).

(p) Hampton Library, 4207 Victoria Blvd., Hampton, VA 23669 ((757) 727–1154).

A limited number of copies of the final EA are available by contacting Mr. George Tahu at the address below.

**FOR FURTHER INFORMATION CONTACT:** George Tahu, NASA Program Executive, Science Mission Directorate/Planetary Science Division, Mail Stop 3V71, NASA Headquarters, 300 E Street SW., Washington, DC 20546 via telephone at (202) 358–0000 or electronic mail at *routine-payload-ea@lists.nasa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Public Involvement

NASA solicited public and agency review and comment on the environmental impacts of the Proposed Action through:

1. Publishing notices of availability of the Draft EA in local newspapers and the **Federal Register**;
2. Making the Draft EA available for review at local public libraries;
3. Publishing the Draft EA on the NASA Web site; and
4. Consulting with Federal, state, and local agencies.

Comments received were considered in the final EA. Comments and responses to comments are provided in Appendix G of the final EA.

## Proposed Action

NASA proposes to carry out a variety of missions involving the launch of routine payloads over the next several decades.

By collecting a range of unique scientific and engineering data from space and transmitting the data to Earth, NRP spacecraft would support NASA's strategic goals:

(a) To extend and sustain human activities across the solar system;

(b) To expand scientific understanding of the Earth and the universe in which we live; and

(c) To create the innovative new space technologies for our exploration, science, and economic future.

The proposed action includes preparing, launching and decommissioning missions identified as routine payload missions. Routine payload spacecraft would be placed into Earth orbit or into Earth-escape trajectories (i.e., solar orbit) using one of a group of expendable launch vehicles (ELVs) routinely launched from Cape Canaveral Air Force Station (CCAFS), Florida; Vandenberg Air Force Base (VAFB), California; Reagan Test Site at the U. S. Army Kwajalein Atoll in the Republic of the Marshall Islands (USAKA/RTS); NASA Wallops Flight Facility (WFF), Virginia; and, Kodiak Launch Complex (KLC), Alaska. The launch vehicles include: Athena I and II, the Atlas V family, the Delta family, the Taurus family, the Falcon family, the Pegasus XL, and the Minotaur family.

## Alternatives

Alternatives to the proposed action that were evaluated include: (1) Utilizing a foreign launch vehicle or, (2) NASA would not launch spacecraft missions defined as routine payloads (the ''no action'' alternative). U.S. launch vehicles are proposed for launch of NASA routine payloads. The nature of environmental impacts, payload processing, launch sites, and other related information for foreign launch systems are generally not as well known or as well documented as for launches from the U.S. In addition, use of non-U.S. launch vehicles requires individual consideration, review, and additional documentation. Therefore, foreign launch vehicles were not considered to be reasonable alternatives for the purpose of this routine payload spacecraft EA. The no action alternative would not meet the purpose and need for the action.

## Environmental Impacts

Maximum potential impacts to the human environment associated with the proposed action arise from the normal launch of the Atlas V (largest solids from CCAFS), the Delta IV (largest solids from VAFB), and the Delta II 2925 (largest hypergolic propellant load from CCAFS and VAFB). Launch accident scenarios have also been addressed and indicate no potential for substantial environmental impact to the human environment. Air emissions from the exhaust produced by the solid propellant and first stage primarily include carbon monoxide, hydrochloric acid, aluminum oxide in soluble and insoluble forms, carbon dioxide, and deluge water mixed with propellant by-products. The primary emission products from the liquid engines include carbon dioxide, carbon monoxide, water vapor, oxides of nitrogen, and carbon particulates. Air impacts will be short-term and not substantial. Short-term water quality and noise impacts, as well as short-term effects on wetlands, plants, and animals, would occur in the vicinity of the launch complex. These short-term impacts are of a nature to be self-correcting, and none of these effects would be substantial. There would be no impact on threatened or endangered species or critical habitat, cultural resources, or floodplains.

NASA routine payloads would follow the NASA guidelines regarding orbital debris and minimizing the risk of human casualty for uncontrolled reentry into the Earth's atmosphere. None of the NASA routine payload missions covered under the EA would have radioactive materials aboard the spacecraft, except for the possibility of very small quantities on certain missions for instrumentation purposes. Consequently, no potential substantial adverse impacts from radioactive substances are anticipated. No other individual or cumulative impacts of environmental concern have been identified.

The level and scope of environmental impacts associated with the launch of NASA routine payload are well within the envelope of impacts that have been addressed in previous EAs/FONSIs concerning other launch vehicles and spacecraft. NASA routine payloads would not increase launch rates nor utilize launch systems beyond the scope of approved programs at the identified launch sites. No specific NASA routine payload processing or launch activities have been identified that would require new permits and/or mitigation measures beyond those currently in place or in coordination. No significant new circumstances or information relevant to environmental concerns associated with the launch vehicles have been identified which would affect the earlier findings. NASA is formally adopting the existing launch vehicle/launch site NEPA documentation referenced in Appendix A of the final EA.

As specific spacecraft missions are sufficiently defined, they will be reviewed to determine whether or not the proposed mission falls within the scope of the final EA. If a proposed mission is found to be inconsistent with the routine payload categorization, additional environmental review will be conducted and documented, as appropriate.

NASA has reviewed the final EA prepared for the launch of Routine Payloads on expendable launch vehicles and has concluded that the final EA represents an accurate and adequate analysis of the scope and level of associated environmental impacts. NASA hereby incorporates the final EA by reference in this FONSI. On the basis of the final EA, NASA has determined that the environmental impacts associated with the proposed action would not individually or cumulatively have an impact on the quality of the human environment. Therefore, an

environmental impact statement is not required.

**Charles J. Gay,**

*Acting Associate Administrator for Science Mission Directorate.*

[FR Doc. 2011–30155 Filed 11–21–11; 8:45 am]

BILLING CODE P

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**TIME AND DATES:** The Members of the National Council on Disability (NCD) will meet by phone on Thursday, December 8, 2011, 1 p.m.–5 p.m., ET.

**PLACE:** The meeting will occur by phone. NCD staff will participate in the call from the Access Board Conference Room, 1331 F Street, NW., Suite 800, Washington, DC. Interested parties may join the meeting in person at the Access Board Conference Room or may join the phone line in a listening-only capacity (with the exception of the public comment period) using the following call-in information: Call-in number: 1–(877) 446–3914; Passcode: 569168.

**MATTERS TO BE CONSIDERED:** The Council will meet by phone to provide standing committee reports, including NCD updates on several policy matters—including the Community Living Assistance Services and Supports (CLASS) Program; effective communication strategies for people with disabilities before, during, and after disasters; and the 2012 NCD Progress Report—and receive presentations by the following individuals: Bill Kiernan, Director, Institute for Community Inclusion, University of Massachusetts-Boston to discuss employment issues for people with disabilities; Rodney Whitlock, Health Policy Director for the Office of Senator Chuck Grassley (R–IA), to discuss the Super Committee and potential impact of recommendations on people with disabilities; and Deborah Spitalnik, Director, and Carrie Coffield, Pediatrics Instructor, The Elizabeth M. Boggs Center on Developmental Disabilities, University of Medicine & Dentistry of New Jersey-Robert Wood Johnson Medical School Department of Pediatrics to discuss voting for people with disabilities. Policy discussions will be followed by a period for public comment by phone or in-person. Any individuals interested in providing public comment will be asked to provide their names, their organizational affiliations if applicable, and limit their comments to three minutes. Those individuals who plan to provide public comment may also send their comments in writing to Lawrence Carter-Long, Public Affairs Specialist, at *lcarterlong@ncd.gov*, using the subject line of ''Public Comment.'' Although individuals may provide public comment on any subject, the Council encourages comments about the Super Committee's debt reduction proposal in particular.

**CONTACT PERSON FOR MORE INFORMATION:** Anne Sommers, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; (202) 272–2004 (V), (202) 272–2074 (TTY).

### Accommodations

Those who plan to attend or listen by phone and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: November 18, 2011.

**Aaron Bishop,**

*Executive Director.*

[FR Doc. 2011–30224 Filed 11–18–11; 11:15 am]

BILLING CODE 6820–MA–P

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Board of Directors Audit Committee Meeting; Sunshine Act

**TIME AND DATE:** 1 p.m., Tuesday, November 22, 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. Executive Session with Internal Audit Director
III. Executive Session Related to Pending Litigation
IV. Internal Audit Report with Management's Response
V. FY '12 Risk Assessment and Internal Audit Plan
VI. FY '12 EHLP Risk Assessment and Internal Audit Plan
VII. Five Year Internal Audit Plan Projects
VIII. External Business Relationships
IX. Internal Audit Status Reports
X. National Foreclosure Mitigation Counseling (NFMC)/Emergency Homeowners Loan Program (EHLP) Update
XI. CFO Update
XII. OHTS Watch List
XIII. Adjournment

**Erica Hall,**

*Assistant Corporate Secretary.*

[FR Doc. 2011–30256 Filed 11–18–11; 4:15 pm]

BILLING CODE 7570–02–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0269]**

### Incorporation of Risk Management Concepts in Regulatory Programs

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for public comments.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering development of a strategic vision to better incorporate risk management concepts into its regulatory programs. To continue NRC's longstanding goal to move toward more risk-informed, performance-based approaches in its regulatory programs, Chairman Gregory Jaczko has chartered a task force headed by Commissioner George Apostolakis to develop a strategic vision and options for adopting a more comprehensive and holistic risk-informed, performance-based regulatory approach that would continue to ensure the safe and secure use of nuclear material. As part of this initiative, the task force is seeking comments from external stakeholders on a series of questions that will provide input for the task force to consider in its work.

**DATES:** Submit comments by January 6, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2011–0269 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–2011–0269. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of

Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at (301) 492–3446.

**FOR FURTHER INFORMATION CONTACT:** Christiana Lui, Risk Management Task Force, Office of Commissioner Apostolakis, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1801, email: *Christiana.Lui@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

I. Submitting Comments and Accessing Information
II. Background
III. Why Risk Management and Why Now
IV. The Role of Stakeholder Input
V. Paperwork Reduction Act Statement

## I. Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* This Risk Management Survey is available electronically under ADAMS Accession Number ML112870118.

• *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–2011–0269.

## II. Background

The NRC has a longstanding goal to move toward more risk-informed, performance-based approaches in its regulatory programs. In 1995, the Commission finalized and published its policy on how risk assessment would be used in agency decisionmaking (see *http://www.nrc.gov/reading-rm/doc-collections/commission/policy/60fr42622.pdf*). In the late 1990s-early 2000s timeframe, the NRC staff undertook a number of initiatives to better incorporate risk insights and performance considerations into its regulatory programs. These initiatives resulted in fundamental changes to how the NRC conducts its licensing, inspection and rulemaking programs. The Commission has also directed the NRC staff to solicit input from industry and other stakeholders on performance-based initiatives, including areas that are not amenable to risk-informed approaches, to supplement the NRC's traditional deterministic system of licensing and oversight. It should be noted that deterministic [1] and prescriptive [2] regulatory requirements were based mostly on experience, testing programs and expert judgment, considering factors such as engineering margins and the principle of defense-in-depth. These requirements are viewed as being successful in establishing and maintaining adequate safety margins for NRC-licensed activities. The NRC has recognized that deterministic and prescriptive approaches can limit the flexibility of both the regulated industries and the NRC to respond to lessons learned from operating experience and support the adoption of improved designs or processes.

The NRC has as one of its primary safety goal strategies the use of sound science and state-of-the-art methods to establish, where appropriate, risk-informed and performance-based regulations. The NRC issued SECY–98–144, ''White Paper on Risk-Informed and Performance-Based Regulation'' (see *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1998/secy1998-144/1998-144scy.pdf*), to define the terminology and expectations for evaluating and implementing the initiatives related to risk-informed, performance-based approaches. The paper defines a performance-based approach as follows:

> A performance-based regulatory approach is one that establishes performance and results as the primary basis for regulatory decisionmaking, and incorporates the following attributes:
> (1) Measurable (or calculable) parameters (*i.e.,* direct measurement of the physical parameter of interest or of related parameters that can be used to calculate the parameter of interest) exist to monitor system, including facility and licensee, performance,
> (2) objective criteria to assess performance are established based on risk insights, deterministic analyses and/or performance history,
> (3) licensees have flexibility to determine how to meet the established performance criteria in ways that will encourage and reward improved outcomes; and
> (4) a framework exists in which the failure to meet a performance criterion, while undesirable, will not in and of itself constitute or result in an immediate safety concern.[3]

Performance-based approaches can be pursued either independently or in combination with risk-informed approaches. The NRC staff and the Commission continued to make progress on developing policies and guidance related to performance-based approaches and subsequently issued documents such as SECY–00–191, ''High Level Guidelines for Performance-Based Activities'' (see *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2000/secy2000-0191/2000-0191scy.pdf*); and NUREG/BR–0303, ''Guidance for Performance-Based Regulation'' (see *http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0303/*).

[1] A deterministic approach to regulation establishes requirements for engineering margin and for quality assurance in design, manufacture, and construction. In addition, it assumes that adverse conditions can exist and establishes a specific set of design basis events and related acceptance criteria for specific systems, structures, and components based on historical information, engineering judgment, and desired safety margins. An example is a defined load on a structure (e.g., from wind, seismic events, or pipe rupture) and an engineering analysis to show that the structure maintains its integrity.

[2] A prescriptive requirement specifies particular features, actions, or programmatic elements to be included in the design or process, as the means for achieving a desired objective. An example is a requirement for specific equipment (e.g., pumps, valves, heat exchangers) needed to accomplish a particular function (e.g., remove a defined heat load).

[3] Using the previous example (footnote 2), a performance-based approach might provide additional flexibility to a licensee on plant equipment and configurations used to accomplish a safety function (e.g., removing a heat load), but the performance criteria could not be the actual loss of a safety function that would result in the release of radioactive materials.

Risk and performance considerations for materials and fuel cycle licensees were documented in SECY–99–062, ''Nuclear Byproduct Material Risk Review'' (see *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1999/secy1999-062/1999-062scy.pdf*); SECY–99–100, ''Framework for Risk-Informed Regulation in the Office of Nuclear Material Safety and Safeguards'' (see *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1999/secy1999-100/1999-100scy.pdf*); SECY–00–0048, ''Nuclear Byproduct Material Risk Review'' (see *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2000/secy2000-0048/2000-0048scy.pdf*); and the Phase II Byproduct Material Review (ADAMS Accession No. ML012430396).

Perhaps the most significant programmatic adoption of risk-informed and performance-based considerations in the reactor area took place with implementation of the Reactor Oversight Process (ROP) in April of 2000. The ROP replaced the previous Systematic Assessment of Licensee Performance (SALP) program with explicit consideration of risk and performance considerations. The normal ''baseline'' inspection program is focused on the more risk-important areas of plant operations. In addition, events or conditions at plants are assessed for significance using probabilistic risk models. The results of such assessments are used to direct additional oversight to plants with more significant findings. A more recent reactor initiative that adopts a risk-informed and performance-based approach is the incorporation of the National Fire Protection Association (NFPA) standard NFPA 805, ''Performance-Based Standard for Fire Protection for Light-Water Reactor Electric Generating Plants'' into NRC's regulations (**Federal Register**, 69 FR 33536; June 16, 2004; see *http://edocket.access.gpo.gov/2004/pdf/04-13522.pdf*). NFPA 805 provides deterministic requirements that are very similar to those in NRC's traditional fire protection regulations, and also includes performance-based methods for evaluating plant configurations that provide a comparable and equivalent level of safety intended by the conservative deterministic requirements. The performance-based methods allow engineering analyses to demonstrate that the changes in overall plant risk that result from these plant configurations is acceptably small and that fire protection defense-in-depth is maintained.[4] Defense-in-depth as applied to fire protection means that an appropriate balance is maintained between: (1) Preventing fires from starting; (2) timely detection and extinguishing of fires that might occur; and (3) protection of SSCs important to safety from a fire that is not promptly extinguished. The adoption of NFPA 805 provides a licensee with flexibility regarding how to implement its fire protection program while maintaining an acceptable level of fire safety.

In the materials area, the NUREG–1556 series, Volumes 1–21, ''Consolidated Guidance About Materials Licensees'' (see *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/*) was developed in the late 1990's to pull together into one place the various guidance documents written over the years for the wide variety of materials licensees. These documents allow license applicants to find the applicable regulations, guidance and acceptance criteria used in granting a materials license. Operational experience (performance) and risk insights guided the development of these documents. Over time the guidance in NUREG–1556 has been revised to further incorporate risk insights, performance considerations and changing technology. A new revision to the series is under development to address security and other issues.

The materials inspection program was fundamentally revised in 2001—both in terms of approach and frequency—in the Phase II Byproduct Material Review. The inspection approach was modified to emphasize licensee knowledge and performance of NRC-licensed activities over document review. Inspectors now review a licensee's program against focus areas that reflect those attributes which are considered to be most risk-significant. If a licensee's performance against a given focus element during the inspection is considered to be acceptable, the inspector moves on to the next focus element. Performance concerns or questions lead an inspector to go deeper into that area. In addition, inspection frequencies were revised based on risk insights from the NUREG/CR–6642 effort as well as licensee performance over time.

## III. Why Risk Management and Why Now

The initiatives identified above have been successful in making the NRC's regulatory programs less deterministic and prescriptive and more risk-informed and performance-based. The risk-informed approach has provided the NRC the ability to make regulatory decision making more systematic, more objective, more consistent, and more transparent. In addition, it has allowed the NRC to better focus its licensing and inspection efforts on the most risk-significant areas and has provided flexibility in addressing technological change, thus increasing effectiveness and efficiency. However, current projections for flat or declining budgets for the foreseeable future may necessitate NRC to adjust the way it does business to continue to fulfill its mission.

Accordingly, a task force headed by Commissioner George Apostolakis is developing a strategic vision and options for adopting a more comprehensive and holistic risk-informed, performance-based regulatory approach for reactors, materials, waste, fuel cycle, and transportation that would continue to ensure the safe and secure use of nuclear material (ADAMS Accession No. ML110680621). The task force was afforded the flexibility to provide options ranging from a complement to or alternative to the existing regulatory framework. The task force is expected to complete its work by May 2012.

One of the approaches being considered by the task force is risk management. Risk management is being widely used in various sectors, including government agencies, financial institutions and technology companies, to address the kinds of challenges the NRC faces and that the task force must address. In a 2008 report, the Government Accountability Office (GAO) stated that:

> Using principles of risk management can help policymakers reach informed decisions regarding the best ways to prioritize investments in security programs so that these investments target the areas of greatest need. Broadly defined, risk management is a strategic process for helping policymakers make decisions about assessing risk, allocating finite resources, and taking actions under conditions of uncertainty.

While the GAO report was focused on homeland security issues, the task force

[4] Building upon the guidance in Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' Regulatory Guide 1.205, ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' states:

> Prior NRC review and approval is not required for individual changes that result in a risk increase less than $1\times10^{-7}$/year (yr) for CDF [core damage frequency] and less than $1\times10^{-8}$/yr for LERF [large early release frequency]. The proposed change must also be consistent with the defense-in-depth philosophy and must maintain sufficient safety margins. The change may be implemented following completion of the plant change evaluation.

believes that risk management concepts may represent a logical evolution from the risk-informed, performance-based philosophy that has governed many NRC regulatory activities for more than a decade and may be particularly effective in addressing the challenges that the NRC faces in the years to come. Risk management concepts and approaches vary, but generally include the following:

- Identification and framing of the issue
- Identification of options
- Analysis
- Deliberation for integrated decisionmaking
- Implementation
- Performance monitoring and feedback.

Risk management allows for various approaches to consideration of risk in decisionmaking, including both quantitative and qualitative tools, which is essential in the broad range of NRC regulatory programs. It may also provide program managers with a more systematic approach to resource allocation, whether in budget formulation, response to events or licensing decisions.

## IV. The Role of Stakeholder Input

This effort could not be successful without meaningful stakeholder input. The task force is soliciting the views of both internal and external stakeholders to assist them in developing sound and effective long-term strategies. The process of interaction with internal stakeholders is ongoing. However, this **Federal Register** notice is intended to solicit the views of external stakeholders on the options and specific actions that the NRC might undertake in moving toward a more comprehensive and holistic risk management approach for its regulatory programs.

The task force is seeking stakeholder input on the following questions to assist in its work. The task force will use the comments received to inform its deliberations, and its report will address the key issues raised in the comments which are relevant to task force activities. However, the task force does not plan to prepare a detailed response to individual comments or prepare an analysis of comments.

1. Do you believe there is a common understanding and usage of the terms risk-informed, performance-based, and defense-in-depth within the NRC, industry, and other stakeholders? Which terms are especially unclear?

2. What are the relevant lessons learned from the previous successful and unsuccessful risk-informed and performance-based initiatives?

3. What are the relevant lessons learned from the previous successful and unsuccessful deterministic regulatory actions?

4. What are the key characteristics for a holistic risk management regulatory structure for reactors, materials, waste, fuel cycle, and security?

5. Should the traditional deterministic approaches be integrated into a risk management regulatory structure? If so, how?

6. What are the challenges in accomplishing the goal of a holistic risk management regulatory structure? How could these challenges be overcome?

7. What is a reasonable time period for a transition to a risk management regulatory structure?

8. From your perspective, what particular areas or issues might benefit the most by transitioning to a risk management regulatory approach?

## V. Paperwork Reduction Act Statement

This survey contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval number 3150–0197, which expires August 31, 2012.

The burden to the public for these voluntary information collections is estimated to be 2 hours per response. The information gathered will be used to incorporate risk management concepts into NRC's regulatory programs. Send comments regarding this burden estimate to the Information Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0197), Office of Management and Budget, Washington, DC 20503.

*Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

The task force requests comments on these questions by January 6, 2012 to assist in its efforts.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of November, 2011.

**Christiana Lui,**

*Risk Management Task Force, Office of Commissioner Apostolakis.*

[FR Doc. 2011–30098 Filed 11–21–11; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0006]**

## Sunshine Act Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission.

**DATE:** Weeks of November 21, 28, December 5, 12, 19, 26, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

### Week of November 21, 2011

There are no meetings scheduled for the week of November 21, 2011.

### Week of November 28, 2011—Tentative

*Tuesday, November 29, 2011*

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)

a. *U.S. Department of Energy* (High-Level Waste Repository), Docket No. 63–001–HLW; Staff Petition for the Commission to Exercise its Inherent Supervisory Authority to Review Board Orders Regarding Preservation of Licensing Support Network (LSN) Documents Collection, and Staff Request for Stay (Tentative).

b. Final Rule: Requirements for Fingerprint-Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Nonpower Reactors (Research or Test Reactors) (RIN 3150–A125) (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: Tanny Santos, (301) 415–7270)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

*Thursday, December 1, 2011*

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small
Business Programs (Public Meeting)
(Contact: Barbara Williams, (301) 415–7388)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

**Week of December 5, 2011—Tentative**

There are no meetings scheduled for the week of December 5, 2011.

**Week of December 12, 2011—Tentative**

*Tuesday, December 13, 2011*

9 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting)

(Contact: Alex Klein, (301) 415–2822)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of December 19, 2011—Tentative**

There are no meetings scheduled for the week of December 19, 2011.

**Week of December 26, 2011—Tentative**

There are no meetings scheduled for the week of December 26, 2011.

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* 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.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: November 17, 2011.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–30239 Filed 11–18–11; 4:15 pm]

**BILLING CODE 7590–01–P**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### President's Council of Advisors on Science and Technology Meeting

**AGENCY:** Office of Science and Technology Policy.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a conference call of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. The purpose of this conference call is to discuss PCAST's report on undergraduate science, technology, engineering, and mathematics (STEM) education.

**DATES:** The public conference call will be held on Monday, December 12, 2011 (4:30 p.m. to 5 p.m., Eastern Time (ET)). To receive the call-in information, attendees should register for the conference call on the PCAST Web site, http://*www.whitehouse.gov/ostp/pcast* no later than 12 p.m. Eastern Time on Thursday, December 8, 2011.

**FOR FURTHER INFORMATION CONTACT:** Information regarding the meeting agenda, time, and how to register for the meeting is available on the PCAST Web site at: *http://whitehouse.gov/ostp/pcast*. Questions about the conference call should be directed to Dr. Deborah D. Stine, PCAST Executive Director, at dstine@ostp.eop.gov, (202) 456–6006.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology (PCAST) is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from inside the White House and from cabinet departments and other Federal agencies. See the Executive Order at *http://www.whitehouse.gov/ostp/pcast*. PCAST is consulted about and provides analyses and recommendations concerning a wide range of issues where understandings from the domains of science, technology, and innovation may bear on the policy choices before the President. PCAST is administered by the Office of Science and Technology Policy (OSTP). PCAST is co-chaired by Dr. John P. Holdren, Assistant to the President for Science and Technology, and Director, Office of Science and Technology Policy, Executive Office of the President, The White House; and Dr. Eric S. Lander, President, Broad Institute of the Massachusetts Institute of Technology and Harvard.

*Type of Meeting:* Open.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to hold a conference call in open session on December 12, 2011 from 4:30 p.m. to 5 p.m.

During the conference call, PCAST will discuss its report on undergraduate STEM education. Additional information and the agenda, including any changes that arise, will be posted at the PCAST Web site at: *http://whitehouse.gov/ostp/pcast*.

*Public Comments:* It is the policy of the PCAST to accept written public comments of any length, and to accommodate oral public comments whenever possible. The PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on December 12, 2011 at a time specified in the meeting agenda posted on the PCAST Web site at *http://whitehouse.gov/ostp/pcast*. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

*Oral Comments:* To be considered for the public speaker list at the meeting, interested parties should register to speak at *http://whitehouse.gov/ostp/pcast*, no later than 12 p.m. Eastern Standard Time on December 8, 2011. Phone or email reservations to be considered for the public speaker list will not be accepted. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 10 minutes. If more speakers register than there is space available on the agenda, PCAST will randomly select speakers from among those who applied. Those not selected to present oral comments may always file written comments with the committee as described below.

*Written Comments:* Although written comments are accepted until the date of the meeting, written comments should be submitted to PCAST no later than 12 p.m. Eastern Time on December 7, 2011, so that the comments may be made available to the PCAST members prior to the meeting for their consideration. Information regarding how to submit comments and documents to PCAST is available at *http://whitehouse.gov/ostp/pcast* in the section entitled ''Connect with PCAST.''

Please note that because PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public

documents and will be made available for public inspection, including being posted on the PCAST Web site.

*Meeting Accommodations:* Individuals requiring special accommodation to access this public meeting should contact Dr. Stine at least ten business days prior to the meeting so that appropriate arrangements can be made.

**Ted Wackler,**

*Deputy Chief of Staff,*

[FR Doc. 2011–30095 Filed 11–21–11; 8:45 am]

**BILLING CODE P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Rule 17f–2; SEC File No. 270–233; OMB Control No. 3235–0223.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2 (17 CFR 270.17f–2) under the Investment Company Act of 1940 (the ''Act'') (15 U.S.C. 80a–1) is entitled: ''Custody of Investments by Registered Management Investment Company.'' Rule 17f–2 establishes safeguards for arrangements in which a registered management investment company (''fund'') is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets at least three times a year and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission's examination staff. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

The Commission staff estimates that each fund makes 974 responses and spends an average of 252 hours annually in complying with the rule's requirements.[1] Commission staff estimates that on an annual basis it takes: (i) 0.5 hours of fund accounting personnel at a total cost of $82.50 to draft director resolutions;[2] (ii) 0.5 hours of the fund's board of directors at a total cost of $2,000 to adopt the resolution; (iii) 244 hours for the fund's accounting personnel at a total cost of $60,388 to prepare written notations of transactions;[3] and (iv) 7 hours for the fund's accounting personnel at a total cost of $1,155 to assist the independent public accountants when they perform verifications of fund assets.[4] Approximately 243 funds rely upon rule 17f–2 annually.[5] Thus, the total annual hour burden for rule 17f–2 is estimated to be 61,236 hours.[6] Based on the total costs per fund listed above, the total cost of the Rule 17f–2's collection of information requirements is estimated to be $15.5 million.[7]

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. Complying with the collections of information required by rule 17f–2 is mandatory for those funds that maintain custody of their own assets. Responses will not be kept confidential. 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 control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: November 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30072 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] The 971 responses are: 1 (one) response to draft and adopt the resolution and 973 notations. Estimates of the number of hours are based on conversations with individuals in the mutual fund industry. The actual number of hours may vary significantly depending on individual fund assets.

[2] This estimate is based on the following calculation: 0.5 (burden hours per fund) × $165 (fund senior accountant's hourly rate) = $82.50.

[3] Respondents estimated that each fund makes 974 responses on an annual basis and spent a total of 0.25 hours per response. The fund personnel involved are Fund Payable Manager ($157 hourly rate), Fund Operations Manager ($331 hourly rate) and Fund Accounting Manager ($257 hourly rate). The weighted hourly rate of these personnel is $248. The estimated cost of preparing notations is based on the following calculation: 974 × 0.25 × $248 = $60,388.

[4] This estimate is based on the following calculation: 7 × $165 (fund senior accountant hourly rate) = $1,155.

[5] Based on a review of Form N–17f–2 filings for calendar years 2008–2010, each year approximately 243 funds file Form N–17f–2 with the Commission.

[6] This estimate is based on the following calculation: 243 (funds) × 252 (total annual hourly burden per fund) = 61,236 hours for rule. The annual burden for rule 17f–2 does not include time spent preparing Form N–17f–2. The burden for Form N–17f–2 is included in a separate collection of information.

[7] This estimate is based on the following calculation: $63,625.50 (total annual cost per fund) × 243 funds = $15,460,997.

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Rule 12d2–2; SEC File No. 270–86; OMB Control No. 3235–0080 Form 25.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a requests for approval of extension of the existing collection of information provided for the following rule: Rule 12d2–2 (17 CFR 240.12d2–2) and Form 25 (17 CFR 249.25).

On February 12, 1935, the Commission adopted Rule 12d2–2,[1] and Form 25 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Act''), which sets forth the conditions and procedures under which a security may be delisted from an exchange and withdrawn from registration under Section 12(b) of the Act.[2] The Commission adopted amendments to Rule 12d2–2 and Form 25 in 2005.[3] Under the adopted Rule 12d2–2, all issuers and national securities exchanges seeking to delist and deregister a security in accordance with the rules of an exchange must file the adopted version of Form 25 with the Commission. The Commission also adopted amendments to Rule 19d–1 under the Act to require exchanges to file the adopted version of Form 25 as notice to the Commission under Section 19(d) of the Act. Finally, the Commission adopted amendments to exempt options and security futures from Section 12(d) of the Act. These amendments are intended to simplify the paperwork and procedure associated with a delisting and to unify general rules and procedures relating to the delisting process.

The Form 25 is useful because it informs the Commission that a security previously traded on an exchange is no longer traded. In addition, the Form 25 enables the Commission to verify that the delisting and/or deregistration has occurred in accordance with the rules of the exchange. Further, the Form 25 helps to focus the attention of delisting issuers to make sure that they abide by the proper procedural and notice requirements associated with a delisting and/or deregistration. Without Rule 12d2–2 and the Form 25, as applicable, the Commission would be unable to fulfill its statutory responsibilities.

There are 15 national securities exchanges that trade equity securities that will be respondents subject to Rule 12d2–2 and Form 25.[4] The burden of complying with Rule 12d2–2 and Form 25 is not evenly distributed among the exchanges, however, since there are many more securities listed on the New York Stock Exchange, the NASDAQ Stock Market, and NYSE Amex than on the other exchanges. However, for purposes of this filing, the Commission staff has assumed that the number of responses is evenly divided among the exchanges. Since approximately 630 responses under Rule 12d2–2 and Form 25 for the purpose of delisting and/or deregistration of equity securities are received annually by the Commission from the national securities exchanges, the resultant aggregate annual reporting hour burden would be, assuming on average one hour per response, 630 annual burden hours for all exchanges (15 exchanges × an average of 42 responses per exchange × 1 hour per response). In addition, since approximately 118 responses are received by the Commission annually from issuers wishing to remove their securities from listing and registration on exchanges, the Commission staff estimates that the aggregate annual reporting hour burden on issuers would be, assuming on average one reporting hour per response, 118 annual burden hours for all issuers (118 issuers × 1 response per issuer × 1 hour per response). Accordingly, the total annual hour burden for all respondents to comply with Rule 12d2–2 is 748 hours (630 hours for exchanges + 118 hours for issuers). The related internal labor costs associated with these burden hours are $40,784.50 total ($33,232.50 for exchanges ($52.75 per response × 630 responses) and $7,552 for issuers ($64 per response × 118 responses)).

The collection of information obligations imposed by Rule 12d2–2 and Form 25 are mandatory. The response will be available to the public and will not be kept confidential. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

The public may view the background documentation for this information collection at the following Web site, *http://www.reginfo.gov*. Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

November 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30071 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

[1] *See* Securities Exchange Act Release No. 98 (February 12, 1935).

[2] *See* Securities Exchange Act Release No. 7011 (February 5, 1963), 28 FR 1506 (February 16, 1963).

[3] *See* Securities Exchange Act Release No. 52029 (July 14, 2005), 70 FR 42456 (July 22, 2005).

[4] The staff notes that there are additional national securities exchanges that only trade standardized options which are exempt from Rule 12d2–2.

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*
Form 2–E and Rule 609; SEC File No. 270–222; OMB Control No. 3235–0233.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 609 (17 CFR 230.609) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires small business investment companies and business development companies that have engaged in offerings of securities that are exempt from registration pursuant to Regulation E under the Securities Act of 1933 (17 CFR 230.601 to 610a) to report semi-

annually on Form 2–E (17 CFR 239.201) the progress of the offering. The form solicits information such as the dates an offering commenced and was completed (if completed), the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. The information provided on Form 2–E assists the staff in monitoring the progress of the offering and in determining whether the offering has stayed within the limits set for an offering exempt under Regulation E.

During the calendar year 2010, there was one filing of Form 2–E by one respondent. The Commission has previously estimated that the total annual burden associated with information collection and Form 2–E preparation and submission is four hours per filing. Based on the Commission's experience with disclosure documents generally, the Commission continues to believe that this estimate is appropriate.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under rule 609 and Form 2–E is mandatory. The information provided under rule 609 and Form 2–E will not be kept confidential. 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.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30069 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:*

Regulation S–K; OMB Control No. 3235–0071; SEC File No. 270–2.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–K (17 CFR 229.101—*et seq.*) specifies the non-financial disclosure requirements applicable to registration statements under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*); and registration statements, periodic reports, going-private transaction and tender offer statements, proxy and information statements, and any other documents required to be filed under Sections 12, 13, 14, and 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l,* 78m, 78n, 78o(d)). Regulation S–K is assigned one burden hour for administrative convenience.

Written 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 imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30070 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [76 FR 70781, November 15, 2011].

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street, NW., Washington, DC.

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** November 17, 2011 at 2 p.m.

**CHANGE IN THE MEETING:** Deletion of Item.

The following item was not considered during the Closed Meeting on Thursday, November 17, 2011: adjudicatory matter.

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: November 17, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–30190 Filed 11–18–11; 11:15 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65765; File No. S7–04–09]**

### Order Extending Temporary Conditional Exemption for Nationally Recognized Statistical Rating Organizations From Requirements of Rule 17g–5 Under the Securities Exchange Act of 1934 and Request for Comment

November 16, 2011.

### I. Introduction

On May 19, 2010, the Securities and Exchange Commission (''Commission'') conditionally exempted, with respect to certain credit ratings and until December 2, 2010, nationally recognized statistical rating organizations (''NRSROs'') from certain requirements

in Rule 17g–5(a)(3)[1] under the Securities Exchange Act of 1934 (''Exchange Act''), which had a compliance date of June 2, 2010.[2] Pursuant to the Order, an NRSRO is not required to comply with Rule 17g–5(a)(3) until December 2, 2010 with respect to credit ratings where: (1) The issuer of the structured finance product is a non-U.S. person; and (2) the NRSRO has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S. (''covered transactions'').[3] On November 23, 2010, the Commission extended the conditional temporary exemption until December 2, 2011 (the ''Extension Order'').[4] The Commission is extending the temporary conditional exemption exempting NRSROs from complying with Rule 17g–5(a)(3) with respect to rating covered transactions until December 2, 2012.

## II. Background

Rule 17g–5 identifies, in paragraphs (b) and (c) of the rule, a series of conflicts of interest arising from the business of determining credit ratings.[5] Paragraph (a) of Rule 17g–5[6] prohibits an NRSRO from issuing or maintaining a credit rating if it is subject to the conflicts of interest identified in paragraph (b) of Rule 17g–5 unless the NRSRO has taken the steps prescribed in paragraph (a)(1) (*i.e.,* disclosed the type of conflict of interest in Exhibit 6 to Form NRSRO in accordance with Section 15E(a)(1)(B)(vi) of the Exchange Act[7] and Rule 17g–1)[8] and paragraph (a)(2) (*i.e.,* established and is maintaining and enforcing written policies and procedures to address and manage conflicts of interest in accordance with Section 15E(h) of the Exchange Act).[9] Paragraph (c) of Rule 17g–5 specifically prohibits seven types of conflicts of interest. Consequently, an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to these conflicts regardless of whether it had disclosed them and established procedures reasonably designed to address them.

In December 2009, the Commission adopted subparagraph (a)(3) to Rule 17g–5. This provision requires an NRSRO that is hired by an arranger to determine an initial credit rating for a structured finance product to take certain steps designed to allow an NRSRO that is not hired by the arranger to nonetheless determine an initial credit rating—and subsequently monitor that credit rating—for the structured finance product.[10] In particular, under Rule 17g–5(a)(3), an NRSRO is prohibited from issuing or maintaining a credit rating when it is subject to the conflict of interest identified in paragraph (b)(9) of Rule 17g–5 (*i.e.,* being hired by an arranger to determine a credit rating for a structured finance product)[11] unless it has taken the steps prescribed in paragraphs (a)(1) and (2) of Rule 17g–5 (discussed above) and the steps prescribed in new paragraph (a)(3) of Rule 17g–5.[12] Rule 17g–5(a)(3), among other things, requires that the NRSRO must:

- Maintain on a password-protected Internet Web site a list of each structured finance product for which it currently is in the process of determining an initial credit rating in chronological order and identifying the type of structured finance product, the name of the issuer, the date the rating process was initiated, and the Internet Web site address where the arranger represents the information provided to the hired NRSRO can be accessed by other NRSROs;
- Provide free and unlimited access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g–5 that covers that calendar year;[13] and
- Obtain from the arranger a written representation that can reasonably be relied upon that the arranger will, among other things, disclose on a password-protected Internet Web site the information it provides to the hired NRSRO to determine the initial credit rating (and monitor that credit rating) and provide access to the Web site to an NRSRO that provides it with a copy of the certification described in paragraph (e) Rule 17g–5.[14]

[1] *See* 17 CFR 240.17g–5(a)(3).

[2] *See* Securities Exchange Act Release No. 62120 (May 19, 2010), 75 FR 28825 (May 24, 2010) (''Order'').

[3] *See id.* at 28827–28 (setting forth conditions of relief).

[4] *See* Securities Exchange Act Release No. 63363 (Nov. 23, 2010), 75 FR 73137 (Nov. 29, 2010) (''Extension Order'').

[5] 17 CFR 240.17g–5(b) and (c).

[6] 17 CFR 240.17g–5(a).

[7] 15 U.S.C. 78o–7(a)(1)(B)(vi).

[8] 17 CFR 240.17g–1.

[9] 15 U.S.C. 78o–7(h).

[10] *See* 17 CFR 240.17g–5(a)(3); *see also* Securities Exchange Act Release No. 61050 (November 23, 2009), 74 FR 63832 (''Adopting Release'') at 63844–45.

[11] Paragraph (b)(9) of Rule 17g–5 identifies the following conflict of interest: issuing or maintaining a credit rating for a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction that was paid for by the issuer, sponsor, or underwriter of the security or money market instrument. 17 CFR 240.17g–5(b)(9).

[12] 17 CFR 240.17g–5(a)(3).

[13] Paragraph (e) of Rule 17g–5 requires that an NRSRO seeking to access the hired NRSRO's Internet Web site during the applicable calendar year must furnish the Commission with the following certification:

The undersigned hereby certifies that it will access the Internet Web sites described in 17 CFR 240.17g–5(a)(3) solely for the purpose of determining or monitoring credit ratings. Further, the undersigned certifies that it will keep the information it accesses pursuant to 17 CFR 240.17g–5(a)(3) confidential and treat it as material nonpublic information subject to its written policies and procedures established, maintained, and enforced pursuant to section 15E(g)(1) of the Act (15 U.S.C. 78o–7(g)(1)) and 17 CFR 240.17g–4. Further, the undersigned certifies that it will determine and maintain credit ratings for at least 10% of the issued securities and money market instruments for which it accesses information pursuant to 17 CFR 240.17g–5(a)(3)(iii), if it accesses such information for 10 or more issued securities or money market instruments in the calendar year covered by the certification. Further, the undersigned certifies one of the following as applicable: (1) In the most recent calendar year during which it accessed information pursuant to 17 CFR 240.17g–5(a)(3), the undersigned accessed information for [Insert Number] issued securities and money market instruments through Internet Web sites described in 17 CFR 240.17g–5(a)(3) and determined and maintained credit ratings for [Insert Number] of such securities and money market instruments; or (2) The undersigned previously has not accessed information pursuant to 17 CFR 240.17g–5(a)(3) 10 or more times during the most recently ended calendar year.

[14] In particular, under paragraph (a)(3)(iii) of Rule 17g–5, the arranger must represent to the hired NRSRO that it will:

(1) Maintain the information described in paragraphs (a)(3)(iii)(C) and (a)(3)(iii)(D) of Rule 17g–5 available at an identified password-protected Internet Web site that presents the information in a manner indicating which information currently should be relied on to determine or monitor the credit rating;

(2) Provide access to such password-protected Internet Web site during the applicable calendar year to any NRSRO that provides it with a copy of the certification described in paragraph (e) of Rule 17g–5 that covers that calendar year, provided that such certification indicates that the nationally recognized statistical rating organization providing the certification either: (i) Determined and maintained credit ratings for at least 10% of the issued securities and money market instruments for which it accessed information pursuant to paragraph (a)(3)(iii) of Rule 17g–5 in the calendar year prior to the year covered by the certification, if it accessed such information for 10 or more issued securities or money market instruments; or (ii) has not accessed information pursuant to paragraph (a)(3) of Rule 17g–5 10 or more times during the most recently ended calendar year.

(3) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide to the NRSRO, for the purpose of determining the initial credit rating for the security or money market instrument, including information about the characteristics of the assets underlying or referenced by the security or money market instrument, and the legal structure of the security or money market instrument, at the same time such information is provided to the NRSRO; and

(4) Post on such password-protected Internet Web site all information the arranger provides to the NRSRO, or contracts with a third party to provide

The Commission stated in the Adopting Release that subparagraph Rule 17g–5(a)(3) is designed to address conflicts of interest and improve the quality of credit ratings for structured finance products by making it possible for more NRSROs to rate structured finance products.[15] For example, the Commission noted that when an NRSRO is hired to rate a structured finance product, some of the information it relies on to determine the rating is generally not made public.[16] As a result, structured finance products frequently are issued with ratings from only the one or two NRSROs that have been hired by the arranger, with the attendant conflict of interest that creates.[17] The Commission stated that subparagraph Rule 17g–5(a)(3) was designed to increase the number of credit ratings extant for a given structured finance product and, in particular, to promote the issuance of credit ratings by NRSROs that are not hired by arrangers.[18] The Commission's goal in adopting the rule was to provide users of credit ratings with more views on the creditworthiness of structured finance products.[19] In addition, the Commission stated that Rule 17g–5(a)(3) was designed to reduce the ability of arrangers to obtain better than warranted ratings by exerting influence over NRSROs hired to determine credit ratings for structured finance products.[20] Specifically, by opening up the rating process to more NRSROs, the Commission intended to make it easier for the hired NRSRO to resist such pressure by increasing the likelihood that any steps taken to inappropriately favor the arranger could be exposed to the market through the credit ratings issued by other NRSROs.[21]

Rule 17g–5(a)(3) became effective on February 2, 2010, and the compliance date for Rule 17g–5(a)(3) was June 2, 2010.

## III. Extension of Conditional Temporary Extension

In the Order, the Commission requested comment generally, but also on a number of specific issues.[22] The Commission received six comments in response to this solicitation of comment.[23] The commenters expressed concern that the extraterritorial application of Rule 17g–5(a)(3) could, in the commenter's view, among other things, disrupt local securitization markets,[24] inhibit the ability of local firms to raise capital,[25] and conflict with local laws.[26] Several commenters also requested that the conditional temporary exemption be extended or made permanent.[27] The Extension Order again solicited public comment on issues raised in connection with the extra-territorial application of Rule 17g–5(a)(3).[28] One comment letter requested that the Order be made permanent, citing many of the same reasons set forth in prior comment letters.[29]

Given the continued concerns about potential disruptions of local securitization markets, and because the Commission's consideration of the issues raised will benefit from additional time to engage in further dialogue with interested parties and to monitor market and regulatory developments, the Commission believes extending the conditional temporary exemption until December 2, 2012 is necessary or appropriate in the public interest, and is consistent with the protection of investors.

## IV. Request for Comment

The Commission believes that it would be useful to continue to provide interested parties opportunity to comment. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/exorders.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–04–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F St., NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–04–09. This file number should be included on the subject line if email is used. To help us 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/exorders.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St. NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. 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.

## V. Conclusion

For the foregoing reasons, the Commission believes it would be necessary or appropriate in the public interest and consistent with the protection of investors to extend the conditional temporary exemption exempting NRSROs from complying with Rule 17g–5(a)(3) with respect to rating covered transactions until December 2, 2012.

Accordingly,

*It is hereby ordered,* pursuant to Section 36 of the Exchange Act, that a nationally recognized statistical rating

to the NRSRO, for the purpose of undertaking credit rating surveillance on the security or money market instrument, including information about the characteristics and performance of the assets underlying or referenced by the security or money market instrument at the same time such information is provided to the NRSRO.

[15] Adopting Release at 63844.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *See* Order, *supra* note 2, at 28828.

[23] Letter from Masamichi Kono, Vice Commissioner for International Affairs, Financial Services Agency, Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 (''Japan FSA Letter''); Letter from Masaru Ono, Executive Director, Securitization Forum of Japan, to Elizabeth Murphy, Secretary, Commission, dated Nov. 12, 2010 (''SFJ Letter''); Letter from Rick Watson, Managing Director, Association for Financial Markets in Europe/European Securitisation Forum, to Elizabeth Murphy, Secretary, Commission, dated Nov. 11, 2010 (''AFME Letter''); Letter from Jack Rando, Director, Capital Markets, Investment Industry Association of Canada, to Randall Roy, Assistant Director, Division, Commission, dated Sep. 22, 2010 (''IIAC Letter''); Letter from Christopher Dalton, Chief Executive Officer, Australian Securitisation Forum, to Randall Roy, Assistant Director, Division, Commission, dated Jun. 27, 2010 (''AuSF Letter''); Letter from Takefumi Emori, Managing Director, Japan Credit Rating Agency, Ltd. (''JCR'') to Elizabeth Murphy, Secretary, Commission, dated Jun. 25, 2010 (''JCR Letter'').

[24] *See* Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter, AuSF Letter.

[25] *See* AFME Letter; JCR Letter; AuSF Letter.

[26] *See* Japan FSA Letter; AFME Letter; JCR Letter; AuSF Letter; IIAC Letter. With respect to local laws, we note that the European Commission in recent months has issued a relevant proposal for amendments to the European Union Regulation on Credit Ratings. *See* ''Regulation of the European Parliament and of the Counsel on amending Regulation (EC) No 1060/2009 on credit rating agencies'' (available at *http://ec.europa.eu/internal_market/securities/docs/agencies/100602_proposal_en.pdf*).

[27] *See* Japan FSA Letter; SFJ Letter; AFME Letter; JCR Letter.

[28] *See* Letter from Tom Deutsch, Executive Director, American Securitization Forum, and Chris Dalton, Chief Executive Officer, Australian Securitization Forum, to Randall Roy, Assistant Director, and Joseph Levinson, Special Counsel, Division, Commission, dated Aug. 9, 2011.

[29] *See id.*

organization is exempt until December 2, 2012 from the requirements in Rule 17g–5(a)(3) (17 CFR 240.17g–5(a)(3)) for credit ratings where:

(1) The issuer of the security or money market instrument is not a U.S. person (as defined under Securities Act Rule 902(k)); and

(2) The nationally recognized statistical rating organization has a reasonable basis to conclude that the structured finance product will be offered and sold upon issuance, and that any arranger linked to the structured finance product will effect transactions of the structured finance product after issuance, only in transactions that occur outside the U.S.

By the Commission.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–30053 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65761; File No. SR–NASDAQ–2011–152]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a ''Post-Only'' Order Type

November 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 8, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'') to amend Chapter VI, Trading Systems, Section 1, Definitions, and Section 6, Acceptance of Quotes and Orders, to adopt a ''Post-Only Order,'' as described further below.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to introduce a new order type to NOM which is intended to attract new business. Specifically, a Post-Only Order is an order that will not remove liquidity from the System. A Post-Only Order is to be ranked and executed on the Exchange or cancelled, as appropriate, without routing away to another market. Post-Only Orders are evaluated at the time of entry with respect to locking or crossing other orders as follows: (i) if a Post-Only Order would lock or cross an order on the System, the order will be re-priced to $.01 below the current low offer (for bids) or above the current best bid (for offers) and displayed by the System at one minimum price increment below the current low offer (for bids) or above the current best bid (for offers); and (ii) if a Post-Only Order would not lock or cross an order on the System but would lock or cross the national best bid or offer as reflected in the protected quotation of another market center, the order will be handled pursuant to Chapter VI, Section 7(b)(3)(C).

The following examples illustrate how a Post-Only Order will be handled. If NOM is the only options market on the NBBO with a market of $1.00–$1.05, and Exchange B had a market of $ 0.99–$1.07, then a Post-Only Order to buy at $1.05 would be handled as follows: Because the price on the buy order is equal to the lowest NOM offer ($1.05), and because NOM's offer is better than any other market's offer, the order would be processed pursuant to Chapter VI, Section 1(e)(11)(i), such that the order would be re-priced to $1.04 and displayed at $1.04. Similarly, if a market participant were to enter a Post-Only order to buy at $1.06, a price which crosses the NOM market, the result would be the same: the order would be re-priced to $1.04 and displayed at $1.04.

As a second example, if NOM is not part of the NBBO, because NOM's market is $1.00–$1.06, and the NBBO is Market B with a market of $1.01–$1.04, then a Post-Only Order to buy at $1.05 would be handled as follows: Because it would lock the NBBO (the NBO is $1.04), but not the NOM BBO, it would be processed as explained in Chapter VI, Section 1 (e)(11)(ii) and Chapter VI, Section 7(b)(3)(c): It would be re-priced to $1.04 and displayed at $1.03. In this case, the Post-Only Order to buy at $1.05 is being treated the same as a non-Post Only limit order that is designated as non-routable. Similarly, if a market participant were to enter a Post-Only order to buy at $1.05, a price which crosses the NBBO, the result would be the same: The order would be re-priced to $1.04 and displayed at $1.03.

Post-Only Orders received prior to the opening cross or after market close will not be accepted. Post-Only Orders may not have a time-in-force designation of Good Til Cancelled (''GTC'').[3]

The Exchange proposes to add this definition to its rules in Chapter VI as new Section 1(e)(11). The Exchange also proposes to refer to Post-Only Orders in Section 6(a)(2) of its rules, where there is a list of order types. Many equities and options markets currently have similar orders, and the definition of this new order type is consistent with the definitions contained in other exchanges' rules.[4] In addition, repricing to avoid locking and crossing other markets currently applies to nonroutable orders on NOM pursuant to Chapter VI, Section 7(b)(3)(C) in the same way.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NOM Rules, Chapter VI, Section 1(g).

[4] *See e.g.,* BATS Rule 21.1(d)(9).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

and a national market system, and, in general, to protect investors and the public interest, because it offers an additional order type on NOM, which should offer investors new trading opportunities on the Exchange, consistent with just and equitable principles of trade. Furthermore, the Post-Only Order is designed to encourage displayed liquidity and offer NOM market participants greater flexibility to post liquidity on NOM, consistent with removing impediments to and perfecting the mechanisms of a free and open market and a national market system.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–152 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–152. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–152 and should be submitted on or before December 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30056 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65763; File No. SR–BX–2011–077]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Good-Till-Cancelled and Discretionary Orders

November 16,2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 10, 2011, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

BX is filing with the Commission a proposed rule change to adopt the following two new Time in Force conditions in Rule 4751(h): System Hours Good-till-Cancelled (''SGTC'') and Market Hours GTC (''MGTC''), as described below. BX also proposes to amend Rules 4751(f), 4755, Order Entry Parameters, and 4756, Entry and Display of Quotes and Orders, to add Discretionary Orders.

The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at BX's principal office, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add some new features to the BX Equities Market, as described below.

Time in Force

Currently, Rule 4751(h) provides that the term ''Time in Force'' means the period of time that the System will hold an order for potential execution. Time in force conditions, which are listed in Rule 4755(a)(1)(A), currently include System Hours Expire Time (''SHEX''), System Hours Day (''SDAY''), System Hours Immediate or Cancel (''SIOC''), or Good-til-Market Close ''GTMC'').

At this time, two new designations are being added. First, BX proposes to adopt in Rule 4751(h)(3) [sic] to state that ''System Hours Good-till-Cancelled'' or ''SGTC'' shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution from 7 a.m. until 7 p.m. Eastern Time unless cancelled by the entering party, or until 1 year after entry, whichever comes first.

Second, BX proposes to adopt, as Rule 4751(h)(7), ''Market Hours GTC'' or ''MGTC,'' which shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until 1 year after entry, whichever comes first. MGTC Orders shall be available for entry from 7 a.m. until 7 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4 p.m. Eastern Time.

BX also proposes to amend Rule 4755(a)(1)(A) to add SGTC and MGTC designations to this rule, which lists the various Time in Force designations available. BX proposes to delete the sentence in Rule 4755(a)(1)(B) that provides that, in addition to such other designations as may be chosen by a participant, all System orders must be entered with a Time in Force of System Hours Immediate or Cancel or designated as a Pegged Order, an Intermarket Sweep Order, a Price to Comply order, or a Price to Comply Post order. With the addition of two GTC designations, this provision is obsolete.

BX believes that these two new Time in Force designations should be useful to BX participants and may attract additional business to BX.

Discretionary Orders

BX also proposes to adopt a new order type, Discretionary Orders, which are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the cancellation of the open shares of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.

For example, the market on the BX is $10.00 × $10.05 and Order A is entered as a bid for 1,000 shares at $10.00 with a discretionary price of $10.03. It posts on the book at $10.00. Order B is an offer for 500 shares at $10.03 which posts on the book. Order A is cancelled by the system and a 500 share IOC (Order C) is sent into the system to take out Order B at $10.03. Orders C and B trade at $10.03, after which the remaining 500 shares of the original discretionary order (Order A) post on the book at $10.00.

The Exchange proposes to adopt the definition of Discretionary Orders as Rule 4751(f)(1) in the Definitions section where order types are defined. In addition, the Exchange proposes to add Discretionary Orders to Rule 4755(a)(1)(B), which lists various order types, and Rule 4756(c)(3)(B), which governs the display of orders. With respect to the display of orders, Rule 4756 generally states that the System will display the aggregate size of all quotes and orders at the best price to buy and sell resident in the System. Discretionary Orders will be added as an exception, similar to Reserve Size, because Discretionary Orders, by definition, have a non-displayed discretionary price range.

BX believes that Discretionary Orders are useful to market participants, because this order type enables participants to provide price improvement beyond the price at which they are willing to submit an order today; when the price of an order is displayed, the result may be that the market has moved, reflecting that order. Some market participants prefer not to advertise their order but are willing to provide price improvement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Sections 6(b)(5) of the Act,[4] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it offers BX participants an additional Time in Force to better manage their orders and risk, which should, in turn, attract additional orders to BX and enhance the Exchange's competitive position. Furthermore, Discretionary Orders should enable participants to provide price improvement beyond the price at which they are willing to submit an order today, consistent with just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

BX does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [5] and Rule 19b–4(f)(6) [6] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes waiver of the 30-day operative delay is in the interest of investors because it will expedite the introduction of new features to the BX equities market. The features are currently available on other exchanges, and the Commission sees no reason to delay their introduction at the Exchange. Therefore, the Commission designates the proposal to be operative upon filing.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–077 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–BX–2011–077. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–077 and should be submitted on or before December 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30057 Filed 11–21–11; 8:45 am]

**BILLING CODE 8011–01–P**

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[7] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65764; File No. SR–Phlx–2011–153]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Good-till-Cancelled and Discretionary Orders

November 16, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on November 10, 2011, NASDAQ OMX PHLX LLC (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing a proposed rule change to adopt the following two new Time in Force conditions in Rule 3301(h): System Hours Good-till-Cancelled (''SGTC'') and Market Hours GTC (''MGTC'') on NASDAQ OMX PSX (''PSX''), as described below. PHLX also proposes to amend Rules 3301(f)(1), 3305, Order Entry Parameters, and 3306, Entry and Display of Orders, to add Discretionary Orders.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to add some new features to the PSX Market, as described below.

Time in Force

Currently, Rule 3301(h) provides that the term ''Time in Force'' means the period of time that the System will hold an order for potential execution. Time in force conditions, which are listed in Rule 3305(a)(1)(A), include System Hours Expire Time (''SHEX''), System Hours Day (''SDAY''), System Hours Immediate or Cancel (''SIOC''), or Good-til-Market Close ''GTMC''). At this time, two new designations are being added. First, PHLX proposes to adopt, in Rule 3301(h)(3), that ''System Hours Good-till-Cancelled'' or ''SGTC'' shall mean, for orders so designated, that if after entry into the System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution from 7 a.m. until 8 p.m. Eastern Time [3] unless cancelled by the entering party, or until 1 year after entry, whichever comes first.

Second, PHLX proposes to adopt, as Rule 3301(h)(7), ''Market Hours GTC'' or ''MGTC,'' which shall mean for orders so designated, that if after entry into System, the order is not fully executed, the order (or unexecuted portion thereof) shall remain available for potential display and/or execution unless cancelled by the entering party, or until 1 year after entry, whichever comes first. MGTC Orders shall be available for entry from 7 a.m. until 8 p.m. Eastern Time and for potential execution from 9:30 a.m. until 4 p.m. Eastern Time.

Lastly, PHLX proposes to amend Rule 3305(a)(1)(A) to add SGTC and MGTC designations to this rule, which lists the various Time in Force designations available. PHLX proposes to delete the sentence in Rule 3305(a)(1)(B) that provides that, in addition to such other designations as may be chosen by a participant, all System orders must be entered with a Time in Force of System Hours Immediate or Cancel or designated as a Pegged Order, an Intermarket Sweep Order, a Price to Comply order, or a Post-Only Order. With the addition of two GTC designations, this provision is obsolete.

PHLX believes that these two new Time in Force designations should be useful to PHLX participants and may attract additional business to PHLX.

Discretionary Orders

PHLX also proposes to adopt a new order type, Discretionary Orders, which are orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The non-displayed trading interest is not entered into the System book but is, along with the displayed size, converted to an IOC buy (sell) order priced at the highest (lowest) price in the discretionary price range when displayed shares become available or an execution takes place at any price within the discretionary price range. The generation of this IOC order is triggered by the cancellation of the open shares of the Discretionary Order. If more than one Discretionary Order is available for conversion to an IOC order, the system will convert all such orders at the same time and priority will be given to the first IOC order(s) that reaches the trading interest on the other side of the market. If an IOC order is not executed in full, the unexecuted portion of the order is automatically re-posted and displayed in the System book with a new time stamp, at its original displayed price, and with its non-displayed discretionary price range.

For example, the market on the PHLX is $10.00 × $10.05 and Order A is entered as a bid for 1,000 shares at $10.00 with a discretionary price of $10.03. It posts on the book at $10.00. Order B is an offer for 500 shares at $10.03 which posts on the book. Order A is cancelled by the system and a 500 share IOC (Order C) is sent into the system to take out Order B at $10.03. Orders C and B trade at $10.03, after which the remaining 500 shares of the original discretionary order (Order A) post on the book at $10.00.

The Exchange proposes to adopt the definition of Discretionary Orders as Rule 3301(f)(1) in the Definitions section where order types are defined. In addition, the Exchange proposes to add Discretionary Orders to Rule 3305(a)(1)(B), which lists various order types, and Rule 3306(c)(3)(B), which governs the display of orders. With respect to the display of orders, Rule 3306 generally states that the System will display the aggregate size of all quotes and orders at the best price to buy and sell resident in the System. Discretionary Orders will be added as an exception, similar to Reserve Size, because Discretionary Orders, by definition, have a non-displayed discretionary price range.

PHLX believes that Discretionary Orders are useful to market participants, because this order type enables participants to provide price improvement beyond the price at which they are willing to submit an order today; when the price of an order is displayed, the result may be that the market has moved, reflecting that order. Some market participants prefer not to advertise their order but are willing to provide price improvement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, because it offers PHLX participants an additional Time in Force to better manage their orders and risk, which should, in turn, attract additional orders to the Exchange and enhance the Exchange's competitive position. Furthermore, Discretionary Orders should enable participants to provide price improvement beyond the price at which they are willing to submit an order today, consistent with just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were either solicited or received.

[3] The PSX Market operates until 8 p.m.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

## 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [6] and Rule 19b–4(f)(6) [7] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission. The Commission believes waiver of the 30-day operative delay is in the interest of investors because it will expedite the introduction of new features to the PHLX equities market. The features are currently available on other exchanges, and the Commission sees no reason to delay their introduction at the Exchange. Therefore, the Commission designates the proposal to be operative upon filing.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml;*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–153 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–Phlx–2011–153. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–153 and should be submitted on or before December 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–30058 Filed 11–21–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[8] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## Abviva, Inc., ACTIS Global Ventures, Inc., aeroTelesis, Inc., Amwest Insurance Group, Inc., and Auto Underwriters of America, Inc.; Order of Suspension of Trading

November 18, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Abviva, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ACTIS Global Ventures, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of aeroTelesis, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amwest Insurance Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Auto Underwriters of America, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on November 18, 2011, through 11:59 p.m. EST on December 2, 2011.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2011–30217 Filed 11–18–11; 11:15 am]

BILLING CODE 8011–01–P

## DEPARTMENT OF STATE

**[Public Notice: 7693]**

### Foreign Affairs Policy Board Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2), the Department of State announces a meeting of the Foreign Affairs Policy Board to take place on December 19, 2011, at the Department of State, Washington, DC.

The Foreign Affairs Policy Board reviews and assesses: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; and (4) priorities and strategic frameworks for U.S. foreign policy. Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this meeting will be closed to the public as the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526.

For more information, contact Samantha Raddatz at (202) 647–2372.

Dated: November 16, 2011.

**Dan Kurtz-Phelan,**

*Designated Federal Officer.*

[FR Doc. 2011–30245 Filed 11–21–11; 8:45 am]

**BILLING CODE 4710–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Financial Responsibility Requirements for Licensed Reentry Activities

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected supports FAA in determining the amount of required liability insurance for a reentry operator after examining the risk associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0649.

*Title:* Financial Responsibility Requirements for Licensed Reentry Activities.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* This collection is applicable upon concurrence of requests for conducting commercial reentry operations as prescribed in 14 CFR, Parts 400, *et al.,* Commercial Space Transportation Reusable Launch Vehicle and Reentry Licensing Regulation. A commercial space launch services provider must complete the Reusable Launch Vehicle and Reentry Licensing Regulation in order to gain authorization for conducting reentry activities. The information collection requirement enables FAA/AST to determine the amount of required liability insurance for a reentry operator after examining the risks associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

*Respondents:* Approximately 1 reentry operator.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 300 hours.

*Estimated Total Annual Burden:* 300 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30091 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: ACSEP Evaluation Customer Feedback Report

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information is collected from holders of FAA production approvals and selected suppliers to obtain their input on how well the agency is performing the administration and conduct of the Aircraft Certification Systems Evaluation Program (ACSEP).

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0605.

*Title:* ACSEP Evaluation Customer Feedback Report.

*Form Numbers:* FAA Form 8100–7.

*Type of Review:* Renewal of an information collection.

*Background:* The information collected is used by the Aircraft Certification Service's Manufacturing Inspection Offices, Aircraft Certification Offices, and the Production & Airworthiness Certification Division to improve the administration and conduct of the Aircraft Certification Systems Evaluation Program at the local and national levels. Improvements to FAA Order 8100.7, Aircraft Certification Systems Evaluation Program, have been and will continue to be incorporated as a result of the on-going collection of data. It is also used for reporting as a Customer Service Standard in fulfillment of Executive Order 12862, Setting Customer Service Standards.

*Respondents:* Approximately 200 holders of FAA production approvals and selected suppliers.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 30 minutes.

*Estimated Total Annual Burden:* 100 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30080 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Report of Inspections Required by Airworthiness Directives

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Airworthiness Directives are regulations issued to require correct corrective action to correct unsafe conditions in aircraft, engines, propellers, and appliances. Reports of inspections are often needed when emergency corrective action is taken to determine if the action was adequate to correct the unsafe condition. The respondents are aircraft owners and operators.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0056.

*Title:* Report of Inspections Required by Airworthiness Directives.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* Title 14 CFR part 39, Airworthiness Directives (AD), authorized by §§ 40113(a), 44701, and 44702 of Title 49 United States Code, prescribes how the FAA issues ADs. The FAA issues ADs when an unsafe condition is discovered on a specific aircraft type. If the condition is serious enough and more information is needed to develop corrective action, specific information may be required from aircraft owners/operators. If it is necessary for the aircraft manufacturer or airworthiness authority to evaluate the information, owners/operators will be instructed to send the information to them.

*Respondents:* Approximately 1,120 aircraft owners/operators.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 5 minutes.

*Estimated Total Annual Burden:* 2,800 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30079 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operating Requirements: Domestic, Flag and Supplemental Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR part 121 prescribes the requirements governing air carrier operations. The information collected is used to determine air operators' compliance with the minimum safety standards and the applicants' eligibility for air operations certification.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0008.

*Title:* Operating Requirements: Domestic, Flag and Supplemental Operations.

*Form Numbers:* FAA Form 8070–1.

*Type of Review:* Renewal of an information collection.

*Background:* Under the authority of Title 49 CFR 44701, Federal Aviation Regulations Part 121 prescribe the terms, conditions, and limitations as are necessary to ensure safety in air transportation. Each operator which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of FAR Part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

*Respondents:* Approximately 106 air operators/applicants.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 27.52 hours.

*Estimated Total Annual Burden:* 1,297,755 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Dated: Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30077 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Procedures for Non-Federal Navigation Facilities

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Non-Federal navigation facilities are electrical/electronic aids to air navigation which are purchased, installed, operated, and maintained by an entity other than the FAA and are available for use by the flying public.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0014.

*Title:* Procedures for Non-Federal Navigation Facilities.

*Form Numbers:* FAA Forms 6030–1, 6030–17, 6790–4, 6790–5.

*Type of Review:* Renewal of an information collection.

*Background:* FAR Part 171 establishes procedures and requirements for sponsors, both private and public other than FAA, to purchase, install, operate, and maintain electronic navaids for use by the flying public in the National Airspace System (NAS). FAR Part 171 describes procedures for receiving permission to install a facility and requirements to be fulfilled to keep it in service. These requirements include inspection and periodic maintenance. These tasks and any other repair work done to these facilities is recorded in on-site logs, copies of which are sent to the Service Center office.

*Respondents:* Approximately 2,413 sponsors of non-federal navigation facilities.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 13.72 hours.

*Estimated Total Annual Burden:* 33,116 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30078 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Revisions to Digital Flight Data Recorders

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA amended the regulations governing flight data recorders to increase the number of digital flight data recorder parameters for certain Boeing airplanes. This requirement affects all Boeing 737 series airplanes manufactured after August 18, 2000. This change was based on safety recommendations from the National Transportation Safety Board following its investigations of two accidents and several incidents involving 737s.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0616.

*Title:* Revisions to Digital Flight Data Recorders.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* Section 49 United States Code 40113(a) empowers the Secretary of Transportation (or the Administrator of the Federal Aviation Administration) to issue such regulations as he/she shall deem necessary to carry out the provisions of the Act. Section 49 United States Code 44701 empowers the Secretary of Transportation (or the Administrator of the Federal Aviation Administration) to prescribe reasonable rules and regulations, or minimum standards necessary for safety in air commerce. In the case of a B737 airplane accident, when the flight data recorder is retrieved from the scene, the information recorded by the aircraft's recorder will be downloaded and analyzed by accident investigators at the NTSB to determine probable cause. The data is automatically recorded by the flight data recorder; this is a passive information collection requiring no

effort by respondents to collect the information.

*Respondents:* Approximately 2,960 Boeing 737 aircraft.

*Frequency:* Data is electronically recorded constantly for a period of 25 hours of aircraft operation. Old information is overwritten on a continuing basis.

*Estimated Average Burden per Response:* Not applicable.

*Estimated Total Annual Burden:* 1 hour is to be entered into OMB's inventory as a placeholder figure for this passive information collection.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30082 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Exemptions for Air Taxi and Commuter Air Carrier Operations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR part 298 requires air carrier operators to obtain a certificate of public convenience and necessity from the DOT, with the exception of air taxi and commuter air operators.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0633.

*Title:* Exemptions for Air Taxi and Commuter Air Carrier Operations.

*Form Numbers:* OST Form 4507.

*Type of Review:* Renewal of an information collection.

*Background:* Code of Federal Regulation (CFR) 14 part 298, Exemptions for Air Taxi and Commuter Air Carrier Operations, establishes two classifications of air carriers known as air taxi operators and commuter air carriers, the latter being air taxis that offer scheduled passenger service. Generally, they are small businesses, and Part 298 sets a maximum on the size of the aircraft they may operate. The regulation exempts these small operators from certain provisions of the Federal statute to permit them to obtain operating authority by filing a one-page OST Form 4705, Air Taxi Operator and Commuter Air Carrier Registration, and amendments under part 298 of the Regulations of the Department of Transportation (DOT).

*Respondents:* Approximately 2,040 air taxi operators and commuter air carriers.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 30 minutes.

*Estimated Total Annual Burden:* 1,026 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30083 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0653.

*Title:* Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area.

*Form Numbers:* There are no FAA forms associated with this collection.

*Type of Review:* Renewal of an information collection.

*Background:* Each operator seeking to obtain or in possession of an air carrier operating certificate must comply with the requirements of 14 CFR part 135 or part 121, as appropriate. Each of these operators conducting air tours in the Grand Canyon National Park must additionally comply with the collection requirements for that airspace. The FAA will use the information it collects and reviews to monitor compliance with the regulations and, if necessary, take enforcement action against violators of the regulations.

*Respondents:* Approximately 13 air operators.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 44 minutes.

*Estimated Total Annual Burden:* 38 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30085 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Repair Stations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Information is collected from applicants who wish to obtain repair station certification. Applicants must submit FAA form 8310–3 to the appropriate FAA flight standards district office for review.

**DATES:** Written comments should be submitted by January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0682.

*Title:* Certification of Repair Stations.

*Form Numbers:* FAA Form 8310–3.

*Type of Review:* Renewal of an information collection.

*Background:* Part 145 of Title 14, Code of Federal Regulations (14 CFR) prescribes the requirements for the issuance of repair station certificates and associated ratings to maintenance and alteration organizations. The information requested is required from applicants who wish repair station certification. Applicants must submit the required data to the appropriate FAA district office for review and acceptance/approval. If the information is satisfactory, an onsite inspection is conducted. When all the FAR Part 145 requirements have been met an air agency certificate and repair station operations specifications with appropriate ratings and limitations are issued.

*Respondents:* Approximately 4,625 maintenance and alteration organizations.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 9.5 hours.

*Estimated Total Annual Burden:* 185,000 hours.

**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on November 14, 2011.

**Albert R. Spence,**

*FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.*

[FR Doc. 2011–30089 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Twenty-Seventh Meeting: RTCA Special Committee 206: Aeronautical Information and Meteorological Data Link Services

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

**ACTION:** Notice of RTCA Special Committee 206 meeting: Aeronautical Information and Meteorological Data Link Services.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information and Meteorological Data Link Services for 27th meeting.

**DATES:** The meeting will be held December 12–16, 2011, from 9 a.m. to 5 p.m.

**ADDRESS:** The meeting will be held at RTCA, 1150 18th Street, NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206: Aeronautical Information and Meteorological Data Link Services. The agenda will include the following:

**Agenda**

**December 12, 2011**

- Open Plenary Session
  - Chairman's Introductory Remarks
  - Introductions
  - Approval of previous meeting minutes
  - Review and approve meeting agenda
  - Schedule for this week
  - Action item review
  - Sub-Group 3 Work Plan/Roadmap—SG3 Chairmen
  - Discuss Proposed TOR Changes
  - Final Review and Comment

(FRAC): Operational Services and Environmental Definition (OSED) for Aircraft Derived Meteorological Data via ADS–B Data Link for Wake Vortex, Air Traffic Management, and Weather Applications

**December 13, 2011**

- FRAC OSED

**December 14, 2011**

- FRAC OSED

**December 15, 2011**

- Review Concept of Use (ConUse) for AIS and MET Data Link Services

**December 16, 2011**

- Closing Plenary Session
  - Action Item Review Action item review
  - Future meeting plans and dates
  - Approve proposed TOR changes
  - Decision to release the ConUse document for FRAC process
  - Decision to approve the OSED document for release to the PMC

  Note: If needed, FRAC or ConUse review could roll over into Friday, which will delay the start of the 9 a.m. Closing Plenary
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 15, 2011.

**Kathy Hitt,**

*Management Analyst, Business Operations Group, Federal Aviation Administration.*

[FR Doc. 2011–30074 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Fourteenth Meeting: RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services

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

**ACTION:** RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services.

**DATES:** The meeting will be held December 5–9, 2011, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at RTCA, 1150 18th Street, NW., Suite 910, Washington, DC 20036 and Lockheed Martin, 2121 Crystal Drive, Arlington, VA, 22202. If you plan on attending please contact Bonnie Rock at *bonnie.rock@lmco.com* for required security information.

**FOR FURTHER INFORMATION CONTACT:** The RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

**December 5, 2011**

- Open Plenary Session (at RTCA)
  - Chairman's Introductory Remarks
  - Review of Meeting Agenda
  - Review and Approval of 12th and 13th Meeting Minutes
  - Review Action Item Status
- Coordination Activities
  - Consideration of ISRA with SC–206/WG 76
  - Consideration of plan for release of message sets to OPLINK
- Consider Approval of Revision A of DO305/ED154
- Consider Approval of DO–281B/ED–92B
- Review of the work so far:
  - SPR & INT documents version I
  - Validation activities
  - SC–214/WG–78 plan for publication
- Review of Position Papers and Contributions
- Approval of Sub-Group Meeting Objectives

**December 6, 2011**

- Sub-Group Sessions (at RTCA)

**December 7. 2011**

- Sub-Group Sessions (at Lockheed Martin)

**December 8, 2011**

- Plenary Session (at RTCA)
  - Configuration Sub-Group Report & Assignment of Action Items
  - Validation Sub-Group Report & Assignment of Action Items
  - VDL Sub-Group Report & Assignment of Action Items
  - Approval to Publish VDL Mode 2 Documents
  - Approval for Information Release of SPR and Interops
  - Review Dates and Locations of 2012 Plenary and SG Meetings
- Any Other Business
- Adjourn

**December 9, 2011**

- Sub Group Sessions (RTCA)

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 15, 2011.

**Kathy Hitt,**

*Management Analyst, Business Operations Group, Federal Aviation Administration.*

[FR Doc. 2011–30075 Filed 11–21–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 6 (Sub-No. 478X)]**

### BNSF Railway Company—Abandonment Exemption—in Cass County, ND

BNSF Railway Company (BNSF) has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F—*Exempt Abandonments* to abandon 7.40 miles of rail line extending between milepost 68.10 at Arthur and milepost 75.50 at Hunter, in Cass County, ND (the Line). The Line traverses United States Postal Service Zip Codes 58006 and 58048 and includes the Arthur and Hunter stations.

BNSF has certified that: (1) No local traffic has moved over the Line for at least 2 years; (2) the Line is stub-ended and not capable of handling any overhead traffic, therefore, there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7(c) (environmental report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the

abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 22, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 2, 2011. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 12, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed a combined environmental and historic report that addresses the effects, if any, of the abandonment on the environment and historic resources. OEA will issue an environmental assessment (EA) by November 25, 2011. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by BNSF's filing of a notice of consummation by November 22, 2012, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 15, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Raina S. White,**

*Clearance Clerk.*

[FR Doc. 2011–30104 Filed 11–21–11; 8:45 am]

**BILLING CODE 4915–01–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0727]**

## Proposed Information Collection (Survey of Post-Deployment Adjustment Among OEF and OIF Veterans); Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to identify gender-specific treatment needs of returning Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) Veterans.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 23, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0727'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Survey of Post-Deployment Adjustment Among OEF and OIF Veterans, VA Form 10–21089.

*OMB Control Number:* 2900–0727.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The data collected on VA Form 10–21089 will be used to access health conditions, occupational, family and social adjustment and functioning of Veterans who were deployed to Afghanistan and/or Iraq. The goal is to identify the gender-specific treatment needs of Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) Veterans with an emphasis on the needs of female Veterans who experienced war zone stressor beyond traditional combat and sexual trauma during deployment. VA will use the data to identify how homecoming experiences (healthcare, relationship and parenting readjustment) differently affect male and female Veterans.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 1,333 hours.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 4,000.

Dated: November 17, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–30086 Filed 11–21–11; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0728]**

## Proposed Information Collection (Operation Enduring Freedom/ Operation Iraqi Freedom Veterans Health Needs Assessment) Activity; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to develop a program that will improve the quality and relevance of care, as it pertains to access for mental health and use of mental health facilities for returning Operation Enduring Freedom/ Operation Iraqi Freedom veterans and their families.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before January 23, 2012.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *email: cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–0728'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Harvey-Pryor at (202) 461–5870 or FAX (202) 273–9381.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Operation Enduring Freedom/ Operation Iraqi Freedom Veterans Health Needs Assessment, VA Form 10–21091.

*OMB Control Number:* 2900–0728.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA Form 10–21091 is used to gather input from returning war zone veterans to identify their needs, concerns and health care preferences. The data collected will help VA to improve the quality and relevance of care offered as well as access to care through the removal of identified barriers to care and to develop care pathways as indicated by veterans' responses to the survey.

*Affected Public:* Individuals and Households.

*Estimated Annual Burden:* 1,000 hours.

*Estimated Average Burden per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 3,000.

Dated: November 17, 2011.

By direction of the Secretary.

**Denise McLamb,**

*Program Analyst, Enterprise Records Service.*

[FR Doc. 2011–30087 Filed 11–21–11; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 76 Tuesday,

No. 225 November 22, 2011


Part II

## Department of State

22 CFR Parts 120, 123, 124, et al.
Implementation of Defense Trade Cooperation Treaties; Proposed Rule

**DEPARTMENT OF STATE**

**22 CFR Parts 120, 123, 124, 126, 127, and 129**

**[Public Notice 7683]**

**RIN 1400–AC95**

## Implementation of Defense Trade Cooperation Treaties

**AGENCY:** Department of State.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of State is proposing to amend the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaty between the United States and Australia and the Defense Trade Cooperation Treaty between the United States and the United Kingdom, and identify via a supplement the defense articles and defense services that may not be exported pursuant to the Treaties. Additionally, the Department of State proposes to amend the section pertaining to the Canadian exemption to reference the new supplement, and, with regard to Congressional certification, the Department of State proposes to add Israel to the list of countries and entities that have a shorter certification time period and a higher dollar value reporting threshold.

**DATES:** The Department of State will accept comments on this proposed rule until December 22, 2011.

**ADDRESSES:** Interested parties may submit comments within 30 days of the date of the publication by any of the following methods:

- *Email: DDTCResponseTeam@state.gov* with the subject line, Regulatory Change—Treaties.
- Persons with access to the Internet may also view and comment on this notice by searching for its RIN on the U.S. Government regulations Web site at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2809; Fax (202) 261–8199; or Email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change—Treaties.

**SUPPLEMENTARY INFORMATION:**

| ITAR Part | Proposed change |
|---|---|
| Part 120 | Section 120.19 revised to clarify meaning of reexport or retransfer; new §§ 120.33 and 120.34 added to provide definitions of the Defense Trade Cooperation Treaties between the United States and Australia and the U.K., respectively; new §§ 120.35 and 120.36 added to define the implementing arrangements pursuant to the Treaties between the United States and Australia and the United States and the U.K., respectively. |
| Part 123 | Clarifying edits made throughout section and references to new proposed §§ 126.16 and 126.17 added; Israel added to § 123.9(e). |
| Part 124 | § 124.11 revised to add Israel to the list of countries and entities subject to the 15-day time period regarding Congressional certification. |
| Part 126 | Clarifying edits made throughout section; § 126.5(b) revised to reference the new supplement to part 126, consequently, §§ 126.5(b)(1)–(21) are removed; § 126.16 added to describe the exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia; § 126.17 added to describe the exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom; Supplement No. 1 to part 126 added. |
| Part 127 | Clarifying edits made throughout section; revised to make reference to new proposed §§ 126.16 and 126.17. |
| Part 129 | Sections 129.6(b)(2), 129.7(a)(1)(vii), and 129.7(a)(2) revised to include Israel in the listing of countries and entities. |

These proposed amendments are pursuant to the Security Cooperation Act of 2010 (Pub. L. 111–266), with the inclusion of other proposed changes. Title I of the Security Cooperation Act, the Defense Trade Cooperation Treaties Implementation Act of 2010, implements the Defense Trade Cooperation Treaty between the United States and Australia, done at Sydney, Australia, on September 5, 2007; and the Defense Trade Cooperation Treaty between the United States and the United Kingdom, done at Washington, DC and London on June 21 and 26, 2007, respectively (collectively referred to herein as the ''Treaties''). We propose a supplement to part 126 that will identify those defense articles and defense services exempt from the scope of the Treaties. These proposed amendments would affect parts 120, 123, 126, and 127, with new sections in part 126 describing the licensing exemptions pursuant to the Treaties.

Title III of the Security Cooperation Act creates for Israel a status in law similar to the North Atlantic Treaty Organization (NATO), the member countries of NATO, Australia, Japan, New Zealand, and the Republic of Korea concerning certification to the Congress. Pursuant to the proposed change, we would require certification for transfers to Israel prior to granting any license or other approval for transactions of major defense equipment sold under a contract in the amount of $25,000,000 or more (currently required for amounts of $14,000,000 or more), or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more (currently required for amounts of $50,000,000 or more), and provided the transfer does not include any other countries. The change would also shorten from thirty (30) to fifteen (15) calendar days the certification time period during which approval may not be granted. This proposed amendment would affect parts 123, 124, and 129.

Additionally, we are revising § 126.5, describing the Canadian exemption, to reference the proposed supplement to part 126. This proposed amendment would affect part 126. Section by section identification of the proposed changes follows.

We are revising the authority citation for part 120 to include Public Law 111–266; section 120.1 to reference the Treaties as authorities; and section 120.19 to clarify the meaning of reexport or retransfer. In § 120.28, we are correcting an outdated reference (Shipper's Export Declaration) to refer to the Electronic Export Information. We are proposing new §§ 120.33 and 120.34 to provide definitions of the Defense Trade Cooperation Treaties between the United States and Australia and the U.K., respectively. Also, we are proposing new §§ 120.35 and 120.36 to define the implementing arrangements pursuant to the Treaties between the United States and Australia and the United States and the U.K., respectively.

The proposed change in § 123.4 replaces the word ''export'' with the word ''exporter.'' In the last sentence in

§ 123.9(a), ''a person'' will replace ''exporters,'' and we are adding ''destination'' as an item that must be determined prior to the submission of an application or the claiming of an exemption. We are adding a note following this section. We are revising section 123.9(b) to expand the reference to documents, and to reference the new proposed §§ 126.16 and 126.17. We are adding clarifying language to §§ 123.9(c), (c)(1), and (c)(2); and adding the language of the current (c)(4) to (c)(3). New language pertaining to new §§ 126.16 and 126.17 will comprise a new (c)(4). We are removing and reserving section 123.9(d). We are adding Israel to the list of countries and entities in § 123.9(e); citing the new §§ 126.16 and 126.17 in § 123.9(e)(1); and adding clarifying language to §§ 123.9(e)(3) and (e)(4). We are adding Israel to the list of countries and entities in §§ 123.15(a)(1), (a)(2), and (b). We are adding Australia and the United Kingdom to § 123.16(a), and reference to the Electronic Export Information replaces reference to the Shipper's Export Declaration in this section and in § 123.16(b)(1)(iii). We are clarifying documents in § 123.16(b)(2)(vi), and adding new §§ 123.16(c) and (d) referencing the new §§ 126.16 and 126.17. Section 123.22(b)(2) replaces references to the Shipper's Export Declaration with the Electronic Export Information. We are revising the title and text for § 123.26.

We are revising the authority citation for part 124 to include Public Law 111–266. We are revising section 124.11 to add Israel to the list of countries and entities subject to the 15-day time period regarding Congressional certification.

We are revising the authority citation for part 126 to include Public Law 111–266, and revising section 126.1(e) for clarification. We are adding a section (e)(1), to contain the current requirement found in (e) to notify the Directorate of Defense Trade Controls of any transactions that contravene the prohibitions of § 126.1(a). We are reserving section (e)(2). We are revising section 126.3 to change ''Director'' to ''Managing Director'' and ''Office'' to ''Directorate.'' We are replacing references to Shipper's Export Declaration with Electronic Export Information in § 126.4(d). We are revising section 126.5(a) to change ''Port Director'' to ''Port Directors.'' We are revising section 126.5(b) to reference the new supplement to part 126; consequently, we are removing §§ 126.5(b)(1)–(21). We are removing and reserving section 126.5(c) (defense services not subject to exemption will be covered by the new supplement to part 126). We are revising Section 126.5(d) to change ''re-transfer'' to ''retransfer,'' and revising § 126.5(d)(2) Note 2 to reference the proposed new supplement to part 126. We are adding the terms ''criminal complaint'' and ''other criminal charge'' to § 126.7(a)(3), and adding clarifying language to § 126.7(a)(7). We are revising section 126.13(a) to include reference to § 123.9; revising § 126.13(a)(1) to add the terms ''criminal complaint'' and ''other criminal charge''; and revising § 126.13(a)(4) to include reference to § 123.9. We are proposing section 126.16 to describe the exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia, and proposing § 126.17 to describe the exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom. We are proposing the addition of Supplement No. 1 to part 126, and this provision will delineate those items of the U.S. Munitions List that are outside the scope of the exemptions established by the Treaties and the Canadian exemptions at § 126.5.

We are revising the authority citation for part 127 to include Public Law 111–266. We are revising section 127.1 to make reference, where appropriate, to new proposed §§ 126.16 and 126.17, and we are providing clarifying language, leading to the inclusion of a new proposed § 127.1(e). We are adding the words ''or attempt to use'' in § 127.2(a); ''subchapter'' will replace ''section'' in § 127.2(b); we are adding ''reexport'' and ''retransfer to § 127.2(b)(1); adding ''Electronic Export Information filing'' to § 127.2(b)(2); and proposing a new § 127.2(b)(14). We are adding clarifying language to § 127.3(a); adding the words ''or by exemption'' to § 127.4(a); adding the words ''or claim of an exemption'' to § 127.4(c); and proposing new § 127.4(d). We are revising section 127.7(a) to remove the words ''for which a license or approval is required by this subchapter.'' In § 127.10(a), we are modifying the word ''approval'' with addition of the word ''written.'' We are proposing new § 127.12(b)(5). We are revising the structure of § 127.12(d), removing an unnecessary level, and expanding the example list for ''shipping documents''.

We are revising sections 129.6(b)(2), 129.7(a)(1)(vii), and 129.7(a)(2) to include Israel in the listing of countries and entities.

**Regulatory Analysis and Notices**

*Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from § 553 (Rulemaking) and § 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this proposed rule is exempt from the rulemaking provisions of the APA, the Department is publishing this proposed rule with a 30-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function.

*Regulatory Flexibility Act*

Since this proposed amendment is not subject to the notice-and-comment procedures of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

*Unfunded Mandates Reform Act of 1995*

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 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.

*Executive Order 13175*

The Department of State has determined that this proposed amendment will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirement of Executive Order 13175 does not apply to this proposed amendment.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This proposed amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed amendment.

*Executive Order 12866*

The Department is of the opinion that restricting defense articles exports is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive order 12866. However, the Department has nevertheless reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

*Executive Order 12988*

The Department of State has reviewed this proposed amendment in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Paperwork Reduction Act*

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects**

*22 CFR Parts 120, 123, 124, and 126*

Arms and Munitions, Exports.

*22 CFR Part 127*

Arms and Munitions, Crime, Exports, Penalties, Seizures and Forfeitures.

*22 CFR Part 129*

Arms and Munitions, Exports, Brokering.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120, 123, 124, 126, 127, and 129 are proposed to be amended as follows:

## PART 120—PURPOSE AND DEFINITIONS

1. The authority citation for Part 120 is revised to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; E.O. 13284, 68 FR 4075; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266.

2. Section 120.1 is amended by revising paragraphs (a), (c), and (d) to read as follows:

### § 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 11958, as amended. This subchapter implements that authority. Portions of this subchapter also implement the Defense Trade Cooperation Treaty between the United States and Australia and the Defense Trade Cooperation Treaty between the United States and the United Kingdom. (Note, however, that the Treaties are not the source of authority for the prohibitions in part 127, but instead are the source of one limitation on the scope of such prohibitions.) By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs.

* * * * *

(c) *Receipt of Licenses and Eligibility.*

(1) A U.S. person may receive a license or other approval pursuant to this subchapter. A foreign person may not receive such a license or other approval, except as follows:

(i) A foreign governmental entity in the United States may receive an export license or other export approval;

(ii) A foreign person may receive a reexport or retransfer approval; and

(iii) A foreign person may receive a prior approval for brokering activities.

Requests for a license or other approval other than by a person referred to in paragraphs (c)(1)(i) and (c)(1)(ii) will be considered only if the applicant has registered with the Directorate of Defense Trade Controls pursuant to part 122 or 129 of this subchapter, as appropriate.

(2) Persons who have been convicted of violating the criminal statutes enumerated in § 120.27 of this subchapter, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (*e.g.,* by information) for violating the criminal statutes enumerated in § 120.27 of this subchapter, who are ineligible to contract with, or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension or revocation under § 126.7(a) of this subchapter, or to interim suspension under § 127.8 of this subchapter, are generally ineligible to be involved in activities regulated under this subchapter.

(d) The exemptions provided in this subchapter do not apply to transactions in which the exporter, any party to the export (as defined in § 126.7(e) of this subchapter), any source or manufacturer, broker or other participant in the brokering activities, is generally ineligible as set forth above in paragraph (c) of this section, unless prior written authorization has been granted by the Directorate of Defense Trade Controls.

3. Section 120.19 is revised to read as follows:

### § 120.19 Reexport or retransfer.

*Reexport or retransfer* means the transfer of defense articles or defense services to an end-use, end-user, or destination not previously authorized by license, written approval, or exemption pursuant to this subchapter.

4. Section 120.28 is amended by revising paragraph (b)(2) to read as follows:

### § 120.28 Listing of forms referred to in this subchapter.

* * * * *

(b) * * *

(2) Electronic Export Information filed via the Automated Export System.

* * * * *

5. Section 120.33 is added to read as follows:

### § 120.33 Defense Trade Cooperation Treaty between the United States and Australia.

*Defense Trade Cooperation Treaty between the United States and Australia* means the Treaty between the Government of the United States of America and the Government of

Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. For additional information on making exports pursuant to this treaty, see § 126.16 of this subchapter.

6. Section 120.34 is added to read as follows:

**§ 120.34 Defense Trade Cooperation Treaty between the United States and the United Kingdom.**

*Defense Trade Cooperation Treaty between the United States and the United Kingdom* means the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington DC and London, June 21 and 26, 2007. For additional information on making exports pursuant to this treaty, see § 126.17 of this subchapter.

7. Section 120.35 is added to read as follows:

**§ 120.35 Australia Implementing Arrangement.**

*Australia Implementing Arrangement* means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Washington, March 14, 2008, as it may be amended.

8. Section 120.36 is added to read as follows:

**§ 120.36 United Kingdom Implementing Arrangement.**

*United Kingdom Implementing Arrangement* means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation, done at Washington DC, February 14, 2008, as it may be amended.

## PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

9. The authority citation for part 123 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2753; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261, 112 Stat. 1920; Sec 1205(a), Pub. L. 107–228.

10. Section 123.4 is amended by revising paragraph (d) introductory text to read as follows:

**§ 123.4 Temporary import license exemptions.**

* * * * *

(d) *Procedures.* To the satisfaction of the Port Directors of U.S. Customs and Border Protection, the importer and exporter must comply with the following procedures:

* * * * *

11. Section 123.9 is amended by revising paragraphs (a), (b), (c), (e), (e)(1), (e)(3), (e)(4), and removing and reserving paragraph (d), to read as follows:

**§ 123.9 Country of ultimate destination and approval of reexports or retransfers.**

(a) The country designated as the country of ultimate destination on an application for an export license, or in an Electronic Export Information filing where an exemption is claimed under this subchapter, must be the country of ultimate end use. The written approval of the Directorate of Defense Trade Controls must be obtained before reselling, transferring, reexporting, retransferring, transshipping, or disposing of a defense article to any end-user, end-use, or destination other than as stated on the export license, or in the Electronic Export Information filing in cases where an exemption is claimed under this subchapter, except in accordance with the provisions of an exemption under this subchapter that explicitly authorizes the resell, transfer, reexport, retransfer, transshipment, or disposition of a defense article without such approval. A person must determine the specific end-user, end-use, and destination prior to submitting an application to the Directorate of Defense Trade Controls or claiming an exemption under this subchapter.

**Note to paragraph (a):** In making the aforementioned determination, a person is expected to review all readily available information, including information available to the public generally as well as information available from other parties to the transaction.

(b) The exporter shall incorporate the following statement as an integral part of the bill of lading, airway bill, or other shipping documents and the invoice whenever defense articles or defense services are to be exported or transferred pursuant to a license, other written approval, or an exemption under this subchapter, other than the exemptions contained in § 126.16 and § 126.17 of this subchapter (Note: for exports made pursuant to § 126.16 or § 126.17 of this subchapter, *see* § 126.16(j)(5) or § 126.17(j)(5)): ''These commodities are authorized by the U.S. Government for export only to [country of ultimate destination] for use by [end-user]. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of, to any other country or end-user, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(c) Any person requesting written approval from the Directorate of Defense Trade Controls for the reexport, retransfer, other disposition, or change in end use, end user, or destination of a defense article or defense service initially exported or transferred pursuant to a license or other written approval, or an exemption under this subchapter, must submit all the documentation required for a permanent export license (*see* § 123.1 of this subchapter) and shall also submit the following:

(1) The license number, written authorization, or exemption under which the defense article or defense service was previously authorized for export from the United States (Note: For exports under exemptions at § 126.16 or § 126.17 of this subchapter, the original end-use, program, project, or operation under which the item was exported must be identified.);

(2) A precise description, quantity, and value of the defense article or defense service;

(3) A description and identification of the new end-user, end-use, and destination; and

(4) With regard to any request for such approval relating to a defense article or defense service initially exported pursuant to an exemption contained in § 126.16 or § 126.17 of this subchapter, written request for the prior approval of the transaction from the Directorate of Defense Trade Controls must be submitted:

(i) By the original U.S. exporter, provided a written request is received from a member of the Australian Community, as identified in § 126.16 of this subchapter, or the United Kingdom Community, as identified in § 126.17 of this subchapter (where such a written request includes a written certification from the member of the Australian Community or the United Kingdom Community providing the information set forth in this subsection); or

(ii) By a member of the Australian Community or the United Kingdom Community, where such request provides the information set forth in this section.

(d) [Reserved]

(e) Reexports or retransfers of U.S.-origin components incorporated into a foreign defense article to NATO, NATO agencies, a government of a NATO

country, or the governments of Australia, Israel, Japan, New Zealand, or the Republic of Korea are authorized without the prior written approval of the Directorate of Defense Trade Controls, provided:

(1) The U.S.-origin components were previously authorized for export from the United States, either by a license, written authorization, or an exemption other than those described in either § 126.16 or § 126.17 of this subchapter;

* * * * *

(3) The person reexporting the defense article provides written notification to the Directorate of Defense Trade Controls of the retransfer not later than 30 days following the reexport. The notification must state the articles being reexported and the recipient government.

(4) The original license or other approval of the Directorate of Defense Trade Controls did not include retransfer or reexport restrictions prohibiting use of this exemption.

12. Section 123.15 is amended by revising paragraphs (a)(1), (a)(2), and (b) to read as follows:

**§ 123.15 Congressional certification pursuant to Section 36(c) of the Arms Export Control Act.**

(a) * * *

(1) A license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $50,000,000 or more, to any country that is not a member of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea that does not authorize a new sales territory; or

(2) A license for export to a country that is a member country of the North Atlantic Treaty Organization (NATO), or Australia, Israel, Japan, New Zealand, or the Republic of Korea, of major defense equipment sold under a contract in the amount in the amount of $25,000,000 or more, or for defense articles and defense services sold under a contract in the amount of $100,000,000 or more, and provided the transfer does not include any other countries; or

* * * * *

(b) Unless an emergency exists which requires the proposed export in the national security interests of the United States, approval may not be granted for any transaction until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(c)(1) involving the North Atlantic Treaty Organization, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country; in the case of a license for an export of a commercial communications satellite for launch from, and by nationals of, the Russian Federation, Ukraine, or Kazakhstan, until at least 15 calendar days after the Congress receives such certification.

* * * * *

13. Section 123.16 is amended by revising paragraphs (a) introductory text, (b)(1)(iii), (b)(2)(vi), and adding paragraphs (c) and (d), to read as follows:

**§ 123.16 Exemptions of general applicability.**

(a) The following exemptions apply to exports of unclassified defense articles for which no approval is needed from the Directorate of Defense Trade Controls. These exemptions do not apply to: Proscribed destinations under § 126.1 of this subchapter; exports for which Congressional notification is required (*see* § 123.15 of this subchapter); MTCR articles; Significant Military Equipment (SME); and may not be used by persons who are generally ineligible as described in § 120.1(c) of this subchapter. All shipments of defense articles, including but not limited to those to and from Australia, Canada, and the United Kingdom, require an Electronic Export Information (EEI) filing or notification letter. If the export of a defense article is exempt from licensing, the EEI filing must cite the exemption. Refer to § 123.22 of this subchapter for EEI filing and letter notification requirements.

(b) * * *

(1) * * *

(iii) The exporter certifies in the EEI filing that the export is exempt from the licensing requirements of this subchapter. This is done by writing, ''22 CFR 123.16(b)(1) and the agreement or arrangement (identify/state number) applicable''; and

* * * * *

(2) * * *

(vi) The exporter must certify on the invoice, the bill of lading, air waybill, or shipping documents and in the EEI filing that the export is exempt from the licensing requirements of this subchapter. This is done by writing ''22 CFR 123.16(b)(2) applicable''.

* * * * *

(c) For exports to Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia refer to § 126.16 of this subchapter.

(d) For exports to the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom refer to § 126.17 of this subchapter.

14. Section 123.22 is amended by revising paragraph (b)(2) to read as follows:

**§ 123.22 Filing, retention, and return of export licenses and filing of export information.**

* * * * *

(b) * * *

(2) *Emergency shipments of hardware that cannot meet the pre-departure filing requirements.* U.S. Customs and Border Protection may permit an emergency export of hardware by truck (*e.g.,* departures to Mexico or Canada) or air, by a U.S. registered person, when the exporter is unable to comply with the Electronic Export Information (EEI) filing timeline in paragraph (b)(1)(i) of this section. The applicant, or an agent acting on the applicant's behalf, in addition to providing the EEI using the AES, must provide documentation required by the U.S. Customs and Border Protection and this subchapter. The documentation provided to the U.S. Customs and Border Protection at the port of exit must include the External Transaction Number (XTN) or Internal Transaction Number (ITN) for the shipment and a copy of a notification to the Directorate of Defense Trade Controls stating that the shipment is urgent accompanied by an explanation for the urgency. The original of the notification must be immediately provided to the Directorate of Defense Trade Controls. The AES filing of the export information when the export is by air must be at least two hours prior to any departure from the United States; and, when a truck shipment, at the time when the exporter provides the articles to the carrier or at least one hour prior to departure from the United States, when the permanent export of the hardware has been authorized for export:

* * * * *

15. Section 123.26 is revised to read as follows:

**§ 123.26 Recordkeeping for exemptions.**

Any person engaging in any export, reexport, transfer, or retransfer of a defense article or defense service pursuant to an exemption must maintain records of each such export, reexport, transfer, or retransfer. The records shall include the following information: A description of the defense article, including technical data, or defense service; the name and address of the end-user and other available contact information (*e.g.,* telephone number and electronic mail address); the name of the natural person

responsible for the transaction; the stated end-use of the defense article or defense service; the date and time of the transaction; the Electronic Export Information (EEI) Internal Transaction Number (ITN); and the method of transmission. The person using or acting in reliance upon the exemption shall also comply with any additional recordkeeping requirements enumerated in the text of the regulations concerning such exemption.

* * * * *

## PART 124—AGREEMENTS, OFF–SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

16. The authority citation for part 124 continues to read as follows:

**Authority:** Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

17. Section 124.11 is amended by revising paragraph (b) to read as follows:

### § 124.11 Congressional certification pursuant to Section 36(d) of the Arms Export Control Act.

* * * * *

(b) Unless an emergency exists which requires the immediate approval of the agreement in the national security interests of the United States, approval may not be granted until at least 15 calendar days have elapsed after receipt by the Congress of the certification required by 22 U.S.C. 2776(d)(1) involving the North Atlantic Treaty Organization, any member country of that Organization, or Australia, Israel, Japan, New Zealand, or the Republic of Korea or at least 30 calendar days have elapsed for any other country. Approvals may not be granted when the Congress has enacted a joint resolution prohibiting the export.

* * * * *

## PART 126—GENERAL POLICIES AND PROVISIONS

18. The authority citation for part 126 is revised to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp. p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266.

19. Section 126.1 is amended by revising paragraph (e) to read as follows:

### § 126.1 Prohibited exports, imports, and sales to or from certain countries.

* * * * *

(e) *Proposed sales.* No sale, export, transfer, reexport, or retransfer and no proposal to sell, export, transfer, reexport, or retransfer any defense articles or defense services subject to this subchapter may be made to any country referred to in this section (including the embassies or consulates of such a country), or to any person acting on its behalf, whether in the United States or abroad, without first obtaining a license or written approval of the Directorate of Defense Trade Controls. However, in accordance with paragraph (a) of this section, it is the policy of the Department of State to deny licenses and approvals in such cases.

(1) *Duty to Notify:* Any person who knows or has reason to know of such a proposed or actual sale, export, transfer, reexport, or retransfer of such articles, services, or data must immediately inform the Directorate of Defense Trade Controls. Such notifications should be submitted to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(2) [Reserved]

* * * * *

20. Section 126.3 is revised to read as follows:

### § 126.3 Exceptions.

In a case of exceptional or undue hardship, or when it is otherwise in the interest of the United States Government, the Managing Director, Directorate of Defense Trade Controls, may make an exception to the provisions of this subchapter.

21. Section 126.4 is amended by revising paragraph (d) to read as follows:

### § 126.4 Shipments by or for United States Government agencies.

* * * * *

(d) An Electronic Export Information (EEI) filing, required under § 123.22 of this subchapter, and a written statement by the exporter certifying that these requirements have been met must be presented at the time of export to the appropriate Port Directors of U.S. Customs and Border Protection or Department of Defense transmittal authority. A copy of the EEI filing and the written certification statement shall be provided to the Directorate of Defense Trade Controls immediately following the export.

22. Section 126.5 is amended by removing and reserving paragraph (c) and revising paragraphs (a), (b), (d) introductory text, and Notes 1 and 2, to read as follows:

### § 126.5 Canadian exemptions.

(a) *Temporary import of defense articles.* Port Directors of U.S. Customs and Border Protection and postmasters shall permit the temporary import and return to Canada without a license of any unclassified defense articles (*see* § 120.6 of this subchapter) that originate in Canada for temporary use in the United States and return to Canada. All other temporary imports shall be in accordance with §§ 123.3 and 123.4 of this subchapter.

(b) *Permanent and temporary export of defense articles.* Except as provided in Supplement No. 1 to part 126 of this subchapter and for exports that transit third countries, Port Directors of U.S. Customs and Border Protection and postmasters shall permit, when for end-use in Canada by Canadian Federal or Provincial governmental authorities acting in an official capacity or by a Canadian-registered person for return to the United States, the permanent and temporary export to Canada without a license of unclassified defense articles and defense services identified on the U.S. Munitions List (22 CFR 121.1). The exceptions noted above are subject to meeting the requirements of this subchapter, to include 22 CFR 120.1(c) and (d), parts 122 and 123 (except insofar as exemption from licensing requirements is herein authorized) and § 126.1, and the requirement to obtain non-transfer and use assurances for all significant military equipment. For purposes of this section, ''Canadian-registered person'' is any Canadian national (including Canadian business entities organized under the laws of Canada), dual citizen of Canada and a third country other than a country listed in § 126.1, and permanent resident registered in Canada in accordance with the Canadian Defense Production Act, and such other Canadian Crown Corporations identified by the Department of State in a list of such persons publicly available through the Internet Web site of the Directorate of Defense Trade Controls and by other means.

(c) [Reserved]

(d) *Reexports/retransfer.* Reexport/retransfer in Canada to another end user or end use or from Canada to another destination, except the United States, must in all instances have the prior approval of the Directorate of Defense Trade Controls. Unless otherwise exempt in this subchapter, the original exporter is responsible, upon request from a Canadian-registered person, for obtaining or providing reexport/retransfer approval. In any instance when the U.S. exporter is no longer available to the Canadian end user the

request for reexport/retransfer may be made directly to the Directorate of Defense Trade Controls. All requests must include the information in § 123.9(c) of this subchapter. Reexport/retransfer approval is acquired by:

* * * * *

**Notes to § 126.5:** 1. In any instance when the exporter has knowledge that the defense article exempt from licensing is being exported for use other than by a qualified Canadian-registered person or for export to another foreign destination, other than the United States, in its original form or incorporated into another item, an export license must be obtained prior to the transfer to Canada.

2. Additional exemptions exist in other sections of this subchapter that are applicable to Canada, for example §§ 123.9, 125.4, and 124.2, that allow for the performance of defense services related to training in basic operations and maintenance, without a license, for certain defense articles lawfully exported, including those identified in Supplement No. 1 to part 126 of this subchapter.

23. Section 126.7 is amended by revising the section heading and paragraphs (a)(3), (a)(7) and (e) introductory text to read as follows:

**§ 126.7 Denial, revocation, suspension, or amendment of licenses and other approvals.**

(a) * * *

(3) An applicant is the subject of a criminal complaint, other criminal charge (*e.g.,* an information), or indictment for a violation of any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter; or

* * * * *

(7) An applicant has failed to include any of the information or documentation expressly required to support a license application, exemption, or other request for approval under this subchapter, or as required in the instructions in the applicable Department of State form or has failed to provide notice or information as required under this subchapter; or

* * * * *

(e) *Special definition.* For purposes of this subchapter, the term ''Party to the Export'' means:

* * * * *

24. Section 126.13 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(4) to read as follows:

**§ 126.13 Required information.**

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for other written authorizations (including requests for retransfer or reexport pursuant to § 123.9 of this subchapter) must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

(1) The applicant or the chief executive officer, president, vice-presidents, other senior officers or officials (*e.g.,* comptroller, treasurer, general counsel) or any member of the board of directors is the subject of a criminal complaint, other criminal charge (*e.g.,* an information), or indictment for or has been convicted of violating any of the U.S. criminal statutes enumerated in § 120.27 of this subchapter since the effective date of the Arms Export Control Act, Public Law 94–329, 90 Stat. 729 (June 30, 1976);

* * * * *

(4) The natural person signing the application, notification or other request for approval (including the statement required by this subsection) is a citizen or national of the United States, has been lawfully admitted to the United States for permanent residence (and maintains such lawful permanent residence status under the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a), section 101(a)20, 60 Stat. 163), or is an official of a foreign government entity in the United States, or is a foreign person making a request pursuant to § 123.9 of this subchapter.

* * * * *

25. Section 126.16 is added to read as follows:

**§ 126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.**

(a) Scope of exemption and required conditions.

(1) *Definitions.*

(i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the Australian Community.

(ii) A *transfer* means, for purposes of this section only, the movement of a defense article or defense service, previously exported, by a member of the Australian Community within the Australian Community, or between a member of the United States Community and a member of the Australian Community.

(iii) *Retransfer and reexport* have the meaning provided in § 120.19 of this subchapter.

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives defense articles, including technical data, but who does not have access to such defense articles, for the sole purpose of effecting onward movement to members of the Approved Community.

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license to members of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.

(3) *Export.* In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and Australia, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (*see* paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community). Australian entities and facilities that become ineligible for such membership will be removed from the Australian Community;

(iii) Intermediate consignees involved in the export must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (*see* paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade

Cooperation Treaty between the United States and Australia and mutually agreed to by the U.S. Government and the Government of Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and the Implementing Arrangement thereto (the Australia Implementing Arrangement) (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and Australia (*see* paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the Australian Community to transfer a defense article or defense service under the Defense Trade Cooperation Treaty between the United States and Australia, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) *Transitions* of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community) or the United States Community (*see* paragraph (b) for information on the United States Community/approved exporters);

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and Australia and mutually agreed to by the United States and the Government of Australia pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and Australia and the Australia Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program.

(b) *Authorized exporters.* The following persons compose the United States Community and may export defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and Australia:

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, a security clearance and a need-to-know; and

(2) Nongovernmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to subsection (b) above may not export pursuant to the Defense Trade Cooperation Treaty between the United States and Australia if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (*e.g.,* comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d) *Australian Community.* For purposes of the exemption provided by this section, the Australian Community consists of the Australian entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls Web site at the time of a transaction under this section; Australian entities and facilities that become ineligible for such membership will be removed from the Australian Community.

(e) *Authorized End-uses.* The following end-uses, subject to subsection (f), are specified in the Defense Trade Cooperation Treaty between the United States and Australia:

(1) United States and Australian combined military or counter-terrorism operations;

(2) United States and Australian cooperative security and defense research, development, production, and support programs;

(3) Mutually determined specific security and defense projects where the Government of Australia is the end-user; or

(4) U.S. Government end-use.

(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:

(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls' Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from the Directorate of Defense Trade Controls; or

(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.

(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items eligible under this section.* With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to the Government of Australia if that exporter has been licensed by the Directorate of Defense Trade Controls to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person.

(2) The export of any defense article specific to the existence of (*e.g.,* reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires

prior written approval from the Directorate of Defense Trade Controls.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) Defense articles specific to developmental systems that have not obtained written Milestone B approval from the Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the Department of Defense for an end-use identified pursuant to paragraphs (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI(a)(3) electronically scanned array radar) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article under this subsection. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI(a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under the this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(h) *Transfers, Retransfers, and Reexports.*

(1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the Australian Community (*see* paragraph (d) of this section for specific information on the identification of the Community) to another member of the Australian Community or the United States Community for an end-use that is authorized by this exemption (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the Australian Community to a foreign person that is not a member of the Australian Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraph (d) of this section for specific information on the identification of the Australian Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the Australian Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI(a)(3) electronically scanned array radar) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from the Directorate of Defense Trade Controls for the retransfer, reexport or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under the this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from the Directorate of Defense Trade Controls is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to Australian Department of Defense (ADOD) elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section (**Note:** For purposes of paragraph (h)(7)(i)–(iv), per Section 9(9) of the Australia Implementing Arrangement, ''ADOD Transmission channels'' includes electronic transmission of a defense article and transmission of a defense article by an ADOD contracted carrier or freight forwarder that merely transports or arranges transport for the defense article in this instance.);

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either U.S. or Australian) that is operating in direct support of Australian Department of Defense elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the Australian Community to Australian Department of Defense elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iv) The retransfer or reexport is made by a member of the Australian Community to an Approved Community member (either United States or Australian) that is operating in direct support of Australian Department of Defense elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the Australian Department of Defense for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the Australian Department of Defense may deploy the item as necessary when conducting official business within or outside the Territory of Australia. The item must remain under the effective control of the Australian Department of Defense while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and Members of the Australian Community must immediately notify the Directorate of Defense Trade Controls of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter, any citizen of such countries, or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions.*

(1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless the Directorate of Defense Trade Controls has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported; and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the Directorate of Defense Trade Controls to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by the Directorate of Defense Trade Controls, the license(s) will be returned to the Directorate of Defense Trade Controls by U.S. Customs and Border Protection in accordance with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to the Directorate of Defense Trade Controls with a letter citing the Directorate of Defense Trade Controls' approval to transition to this section as the reason for returning the license(s).

(3) If a member of the Australian Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the Australian Community member must submit a written request to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the Australian Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant **Federal Register** notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the International Traffic in Arms Regulations unless the applicable **Federal Register** notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of Exports.*

(1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall be marked or identified as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read: ''// CLASSIFICATION LEVEL USML//REL AUS and USA Treaty Community//.'' For example, for defense articles classified SECRET, the marking or identification shall be ''//SECRET USML//REL AUS and USA Treaty Community//.''

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be AUS classified as ''Restricted USML'' and, the standard marking or identification shall read ''// RESTRICTED USML//REL AUS and USA Treaty Community//.''

(2) Where defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles AUS classified and marked or identified pursuant to paragraph j(1)(ii) of this section as ''// RESTRICTED USML//REL AUS and USA Treaty Community//'' shall no longer be AUS classified and such marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (*e.g.,* propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed above;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (oral presentations), shall have a verbal notification clearly associating the technical data with the appropriate markings as detailed above; and

(4) Contracts and agreements for the provision of defense services shall be identified with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part

of all shipping documentation (airway bill, bill of lading, manifest, packing documents, delivery verification, invoice, etc.) whenever defense articles are to be exported:

''These commodities are authorized by the U.S. Government for export only to Australia for use in approved projects, programs or operations by members of the Australian Community. They may not be retransferred or reexported or used outside of an approved project, program or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(k) *Intermediate Consignees.*

(1) Unclassified exports under this section may only be handled by:

(i) U.S. intermediate consignees who are:

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter that are identified at the time of export as being on the list of Authorized U.S. Intermediate Consignees, which is available on the Directorate of Defense Trade Controls' Web site.

(ii) Australian intermediate consignees who are:

(A) Members of the Australian Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other Australian parties that are identified at the time of export as being on the list of Authorized Australian Intermediate Consignees, which is available on the Directorate of Defense Trade Controls' Web site.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22–M and supplements or successors).

(l) *Records.*

(1) All exporters authorized pursuant to paragraph (b)(2) of this section who export pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall maintain detailed records of all exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and Australia and the requirements of this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and Australia and the requirements of this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection, or any other authorized U.S. law enforcement officer. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date/time of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (airway bill, bill of lading, manifest, packing documents, delivery verification, invoice, etc.); and

(xvii) Statement of Registration (Form DS–2032).

(2) *Filing of export information.* All exporters of defense articles and defense services under the Defense Trade Cooperation Treaty between the United States and Australia and the requirements of this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) 126.16(e)(1): used for exports in support of United States and Australian combined military or counter-terrorism operations (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) 126.16(e)(2): used for exports in support of United States and Australian cooperative security and defense research, development, production, and support programs (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) 126.16(e)(3): used for exports in support of mutually determined specific security and defense projects where the Government of Australia is the end-user (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) 126.16(e)(4): used for exports that will have a U.S. Government end-use (the U.S. Government contract number or solicitation number (*e.g.,* ''U.S. Government contract number XXXXX'') shall be placed in the appropriate field in the EEI, as well).

Such exports must meet the required export documentation and filing guidelines, including for defense services, of § 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.

(n) *Violations and Enforcement.*

(1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter,

and are subject to all relevant criminal, civil, and administrative penalties (*see* § 127.1 of this subchapter), and may also be subject to other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize any export or attempted export of defense articles that does not comply with this section or that is otherwise unlawful.

(3) The Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement officers may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the Australian Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) *Procedures for Legislative Notification.*

(1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS–4048 (entitled, ''Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act'') from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract or other instrument for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract or other instrument, regardless of value, for the manufacturing abroad of any item of significant military equipment; or

(iv) An amended contract or other instrument that meets the requirements of paragraphs (o)(1)(i)–(o)(1)(iii) of this section.

(2) The Form DS–4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is proposed to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract or other instrument; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.

26. Section 126.17 is added to read as follows:

**§ 126.17 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.**

(a) Scope of exemption and required conditions.

(1) *Definitions.*

(i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States to the United Kingdom Community.

(ii) A *transfer* means, for purposes of this section only, the movement of a defense article or defense service, previously exported, by a member of the United Kingdom Community within the United Kingdom Community, or between a member of the United States Community and a member of the United Kingdom Community.

(iii) *Retransfer and reexport* have the meaning provided in § 120.19 of this subchapter.

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives defense articles, including technical data, but who does not have access to such defense articles, for the sole purpose of effecting onward movement to members of the Approved Community.

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license to members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) of defense articles and defense services not listed in Supplement No. 1 to part 126, for the end-uses specifically identified pursuant to paragraphs (e) and (f) below. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

(3) *Export.* In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction (*see* paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community). United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community;

(iii) Intermediate consignees involved in the export must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (*see* paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the U.S. Government and the Government of the United Kingdom pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the Implementing Arrangement thereto (United Kingdom Implementing Arrangement) (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and the United Kingdom (*see* paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific

information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the United Kingdom Community to transfer a defense article or defense service under the Defense Trade Cooperation Treaty between the United States and the United Kingdom, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) *Transfers* of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the United Kingdom Community (*see* paragraph (d) of this section regarding the identification of members of the United Kingdom Community) or the United States Community (*see* paragraph (b) of this section for information on the United States Community/approved exporters);

(iii) The transfer is required for an end-use specified in the Defense Trade

Cooperation Treaty between the United States and the United Kingdom and mutually agreed to by the United States and the Government of United Kingdom pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the United Kingdom Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program.

(b) *Authorized exporters.* The following persons compose the United States Community and may export defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) Departments and agencies of the U.S. Government, including their personnel, with, as appropriate, a security clearance and a need-to-know; and

(2) Nongovernmental U.S. persons registered with the Directorate of Defense Trade Controls and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to subsection (b) above may not export pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (*e.g.,* comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d) *United Kingdom Community.* For purposes of the exemption provided by this section, the United Kingdom Community consists of the United Kingdom entities and facilities identified as members of the Approved Community through the Directorate of Defense Trade Controls' Web site at the time of a transaction under this section; non-governmental United Kingdom entities and facilities that become ineligible for such membership will be removed from the United Kingdom Community.

(e) *Authorized End-uses.* The following end-uses, subject to subsection (f), are specified in the Defense Trade Cooperation Treaty between the United States and the United Kingdom:

(1) United States and United Kingdom combined military or counter-terrorism operations;

(2) United States and United Kingdom cooperative security and defense research, development, production, and support programs;

(3) Mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user; or

(4) U.S. Government end-use.

(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:

(1) Operations, programs, and projects that can be publicly identified will be posted on the Directorate of Defense Trade Controls' Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from the Directorate of Defense Trade Controls; or

(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.

(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items eligible under this section.* With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to the Government of the United Kingdom if that exporter has been licensed by the Directorate of Defense Trade Controls to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person.

(2) The export of any defense article specific to the existence of (*e.g.,* reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from the Directorate of Defense Trade Controls.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) Defense articles specific to developmental systems that have not obtained written Milestone B approval from the Department of Defense milestone approval authority are not

eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the Department of Defense for an end-use identified pursuant to paragraphs (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article under this subsection. The exporter must obtain a license or other authorization from the Directorate of Defense Trade Controls for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under the this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(8) Defense articles and services specific to items that appear on the European Union Dual Use List (as described in Annex 1 to EC Council Regulation No. 428/2009) are not eligible for export under the Defense Trade Cooperation Treaty between the United States and the United Kingdom.

(h) *Transfers, Retransfers, and Reexports.*

(1) Any transfer of a defense article or defense service not exempted in Supplement No.1 to part 126 of this subchapter by a member of the United Kingdom Community (*see* paragraph (d) of this section for specific information on the identification of the Community) to another member of the United Kingdom Community or the United States Community for an end-use that is authorized by this exemption (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the United Kingdom Community to a foreign person that is not a member of the United Kingdom Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of the Directorate of Defense Trade Controls (*see* paragraph (d) of this section for specific information on the identification of the United Kingdom Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the United Kingdom Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of the Directorate of Defense Trade Controls (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship or aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from the Directorate of Defense Trade Controls for the retransfer, reexport or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under the this section continue to require separate authorization from the Directorate of Defense Trade Controls for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from the Directorate of Defense Trade Controls is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to United Kingdom Ministry of Defense elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either U.S. or U.K.) that is operating in direct support of United Kingdom Ministry of Defense elements deployed outside the Territory of the United Kingdom and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the United Kingdom Community to United Kingdom Ministry of Defense elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section;

(iv) The retransfer or reexport is made by a member of the United Kingdom Community to an Approved Community member (either U.S. or U.K.) that is operating indirect support of United Kingdom Ministry of Defense elements deployed outside the Territory of the United Kingdom engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using United Kingdom Armed Forces transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the United Kingdom Ministry of Defense for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the United Kingdom Ministry of Defense may deploy the item as necessary when conducting official business within or outside the Territory of the United Kingdom. The item must remain under the effective control of the United

Kingdom Ministry of Defense while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and Members of the United Kingdom Community must immediately notify the Directorate of Defense Trade Controls of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter, any citizen of such countries, or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions.*

(1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless the Directorate of Defense Trade Controls has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to the Directorate of Defense Trade Controls, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported; and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from the Directorate of Defense Trade Controls to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by the Directorate of Defense Trade Controls, the license(s) will be returned to the Directorate of Defense Trade Controls by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to the Directorate of Defense Trade Controls with a letter citing the Directorate of Defense Trade Controls' approval to transition to this section as the reason for returning the license(s).

(3) If a member of the United Kingdom Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the United Kingdom Community member must submit a written request to the Directorate of Defense Trade Controls, either directly or through the original U.S. exporter, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were received, and the Treaty-eligible end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) for which the defense articles or defense services will be used. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the United Kingdom Community member has received approval from the Directorate of Defense Trade Controls to transition to this section.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant **Federal Register** notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the International Traffic in Arms Regulations unless the applicable **Federal Register** notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of Exports.*

(1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall be marked or identified as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read: ''// CLASSIFICATION LEVEL USML//REL UK and USA Treaty Community//.'' For example, for defense articles classified SECRET, the marking or identification shall be ''//SECRET USML//REL UK and USA Treaty Community//.''

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be UK classified as ''Restricted USML'' and, the standard marking or identification shall read ''// RESTRICTED USML//REL UK and USA Treaty Community//.''

(2) Where defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles UK classified and marked or identified pursuant to paragraph j(1)(ii) as ''//RESTRICTED USML//REL UK and USA Treaty Community//'' no longer be UK classified and such marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (*e.g.,* propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed above;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical or electronic), shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (oral presentations), shall have a verbal notification clearly associating the technical data with the appropriate markings as detailed above; and

(4) Contracts and agreements for the provision of defense services shall be identified with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part of all shipping documentation (airway bill, bill of lading, manifest, packing documents, delivery verification, invoice, etc.) whenever defense articles are to be exported:

''These commodities are authorized by the U.S. Government for export only to United Kingdom for use in approved projects, programs or operations by members of the United Kingdom

Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(k) *Intermediate Consignees.*

(1) Unclassified exports under this section may only be handled by:

(i) U.S. intermediate consignees who are:

(A) Exporters registered with the Directorate of Defense Trade Controls and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter that are identified at the time of export as being on the list of Authorized U.S. Intermediate Consignees, which is available on the Directorate of Defense Trade Controls' Web site.

(ii) United Kingdom intermediate consignees who are:

(A) Members of the United Kingdom Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other United Kingdom parties that are identified at the time of export as being on the list of Authorized United Kingdom Intermediate Consignees, which is available on the Directorate of Defense Trade Controls' Web site.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22–M and supplements or successors).

(l) *Records.*

(1) All exporters authorized pursuant to paragraph (b)(2) of this section who export pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section shall maintain detailed records of all exports, imports, and transfers made by that exporter of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by the Directorate of Defense Trade Controls of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to the Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection, or any other authorized U.S. law enforcement officer. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.) These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date/time of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in subsection (m) below;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (airway bill, bill of lading, manifest, packing documents, delivery verification, invoice, etc.); and

(xvii) Statement of Registration (Form DS–2032).

(2) *Filing of export information.* All exporters of defense articles and defense services under the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) 126.16(e)(1): Used for exports in support of United States and United Kingdom combined military or counter-terrorism operations (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) 126.16(e)(2): Used for exports in support of United States and United Kingdom cooperative security and defense research, development, production, and support programs (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) 126.16(e)(3): Used for exports in support of mutually determined specific security and defense projects where the Government of the United Kingdom is the end-user (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) 126.16(e)(4): Used for exports that will have a U.S. Government end-use (the U.S. Government contract number or solicitation number (*e.g.,* ''U.S. Government contract number XXXXX'') shall be placed in the appropriate field in the EEI, as well).

Such exports must meet the required export documentation and filing guidelines, including for defense services, of § 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and Commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section, submit a statement to the Directorate of Defense Trade Controls containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or other instruments valued in an amount of $500,000 or more.

(n) *Violations and Enforcement.*

(1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter, and are subject to all relevant criminal, civil, and administrative penalties (*see* § 127.1 of this subchapter), and may also be subject to other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize

any export or attempted export of defense articles that does not comply with this section or that is otherwise unlawful.

(3) The Directorate of Defense Trade Controls, U.S. Immigration and Customs Enforcement, U.S. Customs and Border Protection, and other authorized U.S. law enforcement officers may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the United Kingdom Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) *Procedures for Legislative Notification.*

(1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and the United Kingdom and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after the Directorate of Defense Trade Controls has acknowledged receipt of a Form DS–4048 (entitled, ''Projected Sales of Major Weapons in Support of Section 25(a)(1) of the Arms Export Control Act'') from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract or other instrument for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract or other instrument, regardless of value, for the manufacturing abroad of any item of significant military equipment; or

(iv) An amended contract or other instrument that meets the requirements of paragraphs (o)(1)(i)–(o)(1)(iii) of this section.

(2) The Form DS–4048 required in paragraph (o)(1) of this section shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is proposed to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract or other instrument; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.

27. Supplement No. 1 is added to Part 126 read as follows:

## SUPPLEMENT NO. 1 *

| USML category | Exclusion | (CA) § 126.5 | (AS) § 126.16 | (UK) § 126.17 |
|---|---|---|---|---|
| I–XXI | Classified defense articles and services. *See* Note 1 | X | X | X |
| I–XXI | Defense articles listed in the Missile Technology Control Regime (MTCR) Annex | X | X | X |
| I–XXI | U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter. | ..... | X | X |
| I–XXI | Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption. | X | ..... | ..... |
| I–XXI | Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter. | X | ..... | ..... |
| I–XXI | U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in subsections (e)(1), (2), or (4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement. | ..... | X | X |
| I–XXI | Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment. | X | ..... | ..... |
| I–XXI | Defense articles and services specific to the existence or method of compliance with anti-tamper measures made at U.S. Government direction. | ..... | X | X |
| I–XXI | Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2. | ..... | X | X |
| I–XXI | Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3. | ..... | X | X |
| I–XXI | Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems. | ..... | X | X |
| I–XXI | Nuclear power generating equipment or propulsion equipment (*e.g.* nuclear reactors), specifically designed for military use and components therefore, specifically designed for military use. *See* also § 123.20 of this subchapter. | ..... | ..... | X |
| I–XXI | Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. | ..... | ..... | X |
| I–XXI | Defense services or technical data specific to applied research as defined in § 125.4(c)(3) of this subchapter, design methodology as defined in § 125.4(c)(4) of this subchapter, engineering analysis as defined in § 125.4(c)(5) of this subchapter, or manufacturing know-how as defined in § 125.4(c)(6) of this subchapter. | X | ..... | ..... |

SUPPLEMENT NO. 1 *—Continued

| USML category | Exclusion | (CA) § 126.5 | (AS) § 126.16 | (UK) § 126.17 |
|---|---|---|---|---|
| I–XXI | Defense services that are not based on a written arrangement (between the U.S. exporter and the Canadian recipient) that includes a clause requiring that all documentation created from U.S. origin technical data contain the statement that ''This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic In Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR''. | X | | |
| I | Defense articles and services related to firearms, close assault weapons, and combat shotguns. | X | | |
| II(k) | Software source code related to Categories II(c), II(d), or II(i). *See* Note 4 | | X | X |
| II(k) | Manufacturing know-how related to Category II(d). *See* Note 5 | X | X | X |
| III | Defense articles and services related to ammunition for firearms, close assault weapons, and combat shotguns listed in Category I. | X | | |
| III | Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in Category II. | | | X |
| III(e) | Manufacturing know-how related to Categories III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5. | X | X | X |
| III(e) | Software source code related to Categories III(d)(1) or III(d)(2). *See* Note 4 | | X | X |
| IV | Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6. | X | X | X |
| IV | Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (*i.e.,* not controlled on the MTCR Annex). | | | X |
| IV | Defense articles and services specific to torpedoes | | X | X |
| IV | Defense articles and services specific to anti-personnel landmines | | | X |
| IV(i) | Software source code related to Categories IV(a), IV(b), IV(c), or IV(g). *See* Note 4 | | X | X |
| IV(i) | Manufacturing know-how related to Categories IV(a), IV(b), IV(d), or IV(g) and their specially designed components. *See* Note 5. | X | X | X |
| V | The following energetic materials and related substances:<br>a. TATB (triaminotrinitrobenzene) (CAS 3058–38–6)<br>b. Explosives controlled in USML Category V(a)(32) or V(a)(33)<br>c. Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen<br>d. BOBBA–8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives<br>e. N-methyl-p-nitroaniline (CAS 100–15–2)<br>f. Trinitrophenylmethyl-nitramine (tetryl) (CAS 479–45–8) | | | X |
| V(c)(7) | Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum. | | | X |
| V(d)(3) | Bis-2, 2-dinitropropylnitrate (BDNPN) | | | X |
| VI | Defense Articles specific to equipment specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170 °C). | | | X |
| VI | Defense Articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator. | | | X |
| VI | Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10. | | X | X |
| VI(a) | Nuclear powered vessels | X | X | X |
| VI(c) | Defense articles and services specific to submarine combat control systems | | X | X |
| VI(d) | Harbor entrance detection devices | | | X |
| VI(e) | Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7. | X | X | X |
| VI(g) | Technical data and defense services for gas turbine engine hot sections related to Category VI(f). *See* Note 8. | X | X | X |
| VI(g) | Software source code related to Categories VI(a) or VI(c). *See* Note 4 | | X | X |
| VII | Defense articles specific to equipment specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170 °C). | | | X |

SUPPLEMENT NO. 1 *—Continued

| USML category | Exclusion | (CA) § 126.5 | (AS) § 126.16 | (UK) § 126.17 |
|---|---|---|---|---|
| VII | Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator. | ..... | ..... | X |
| VII | Armored all wheel drive vehicles, other than vehicles specifically designed or modified for military use, fitted with, or designed or modified to be fitted with, a plough or flail for the purpose of land mine clearance. | ..... | ..... | X |
| VII(e) | Amphibious vehicles | ..... | ..... | X |
| VII(f) | Technical data and defense services for gas turbine engine hot sections. *See* Note 8. | X | X | X |
| VIII | Defense articles specific to equipment specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170 °C). | ..... | ..... | X |
| VIII | Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator. | ..... | ..... | X |
| VIII(a) | All Category VIII(a) items | X | ..... | ..... |
| VIII(b) | Defense articles and services specific to gas turbine engine hot section components and digital engine controls. *See* Note 8. | ..... | X | X |
| VIII(f) | Developmental aircraft, engines and components identified in Category VIII(f) | X | ..... | ..... |
| VIII(g) | Ground Effect Machines (GEMS) | ..... | ..... | X |
| VIII(i) | Technical data and defense services for gas turbine engine hot sections related to Category VIII(b). *See* Note 8. | X | X | X |
| VIII(i) | Manufacturing know-how related to Categories VIII(a), VIII(b), or VIII(e) and their specially designed components. *See* Note 5. | X | X | X |
| VIII(i) | Software source code related to Categories VIII(a) or VIII(e). *See* Note 4 | ..... | X | X |
| IX | Training or simulation equipment for MANPADS. *See* Note 6 | ..... | ..... | X |
| IX(e) | Software source code related to Categories IX(a) or IX(b). *See* Note 4 | ..... | X | X |
| IX(e) | Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios. | ..... | ..... | X |
| X(e) | Manufacturing know-how related to Categories X(a)(1) or X(a)(2) and their specially designed components. *See* Note 5. | X | X | X |
| XI(a) | Defense articles and services specific to countermeasures and counter-countermeasures *See* Note 9. | ..... | X | X |
| XI | Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10. | ..... | X | X |
| XI(b) XI(c) XI(d) | Defense articles and services specific to communications security (*e.g.,* COMSEC and TEMPEST). | ..... | X | X |
| XI(d) | Software source code related to Category XI(a). *See* Note 4 | ..... | X | X |
| XI(d) | Manufacturing know-how related to Categories XI(a)(3) or XI(a)(4) and their specially designed components. *See* Note 5. | X | X | X |
| XII | Defense articles and services specific to countermeasures and counter-countermeasures. *See* Note 9. | ..... | X | X |
| XII(c) | Defense articles and services specific to XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End items in XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity. | X | ..... | ..... |
| XII(c) | Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in subsections (e)(1), (2), or (4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement. | X | X | X |
| XII(f) | Manufacturing know-how related to Category XII(d) and their specially designed components. *See* Note 5. | X | X | X |
| XII(f) | Software source code related to Categories XII(a), XII(b), XII(c), or XII(d). *See* Note 4. | ..... | X | X |
| XIII(b) | Defense articles and services specific to Military Information Security Assurance Systems. | ..... | X | X |

SUPPLEMENT NO. 1 *—Continued

| USML category | Exclusion | (CA) § 126.5 | (AS) § 126.16 | (UK) § 126.17 |
|---|---|---|---|---|
| XIII(c) | Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11. | | | X |
| XIII(d) | Carbon/carbon billets and performs which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles. | | | X |
| XIII(f) | Structural materials | | | X |
| XIII(g) | Defense articles and services related to concealment and deception equipment and materials. | | | X |
| XIII(h) | Energy conversion devices other than fuel cells | | | X |
| XIII(i) | Metal embrittling agents | | | X |
| XIII(j) | Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2. | | X | X |
| XIII(k) | Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in Category XIII(b). | | X | X |
| XIII(l) | Software source code related to Category XIII(a). *See* Note 4 | | X | X |
| XIV | Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment. | | X | X |
| XIV(a) XIV(b) XIV(d) XIV(e) XIV(f). | Chemical agents listed in Category XIV(a), (d) and (e), biological agents and biologically derived substances in Category XIV(b), and equipment listed in Category XIV(f) for dissemination of the chemical agents and biological agents listed in Category XIV(a), (b), (d), and (e). | X | | |
| XV(a) | Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload. | X | X | X |
| XV(b) | Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. | | X | X |
| XV(c) | Defense articles and services specific to GPS/PPS security modules | | X | X |
| XV(c) | Defense articles controlled in XV(c) except end items for end use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person. | X | | |
| XV(d) | Defense articles and services specific to radiation-hardened microelectronic circuits | X | X | X |
| XV(e) | Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference. | X | | |
| XV(e) | Antennas having any of the following: | | | |
| | (a) Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; | | | |
| | (b) All sidelobes less than or equal to −35 dB relative to the peak of the main beam; or | | | |
| | (c) Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam). | X | | |
| XV(e) | Optical intersatellite data links (cross links) and optical ground satellite terminals | X | | |
| XV(e) | Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment. | X | | |
| XV(e) | Propulsion systems which permit acceleration of the satellite on-orbit (*i.e.,* after mission orbit injection) at rates greater than 0.1 g. | X | | |
| XV(e) | Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis. | X | | |
| XV(e) | All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites. | X | | |
| XV(e) | Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment. | | X | X |
| XV(f) | Technical data and defense services directly related to the other defense articles excluded from the exemptions for Category XV. | X | X | X |
| XVI | Defense articles and services specific to design and testing of nuclear weapons | X | X | X |
| XVI(c) | Nuclear radiation measuring devices manufactured to military specifications | X | | |
| XVI(e) | Software source code related to Category XVI(c). *See* Note 4 | | X | X |
| XVII | Classified articles and defense services not elsewhere enumerated. *See* Note 1 | X | X | X |
| XVIII | Defense articles and services specific to directed energy weapon systems | | X | X |
| XX | Defense articles and services related to submersible vessels, oceanographic, and associated equipment. | X | X | X |
| XXI | Miscellaneous defense articles and services | X | X | X |

SUPPLEMENT NO. 1 *—Continued

| USML category | Exclusion | (CA) § 126.5 | (AS) § 126.16 | (UK) § 126.17 |
|---|---|---|---|---|

**Note 1:** Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin defense articles and services controlled in Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive or contract that provides for the export of the defense article or service.

**Note 2:** The phrase ''any part of the spectrum'' includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

a. Signature reduction (radio frequency (RF), infrared (IR), Electro-Optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials, (including dual-purpose materials used for Electromagnetic Interference (EM) reduction) technologies, and signature prediction, test and measurement equipment and software and material transmissivity/reflectivity prediction codes and optimization software.

b. Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

**Note 3:** Defense Articles related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

**Note 4:** Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in subsections (e)(1), (2), or (4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

**Note 5:** Manufacturing know-how, as defined in § 125.4(c)(6) of this subchapter, is not eligible for use of the UK or AS Treaty Exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end use identified in subsections (e)(1), (2), or (4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

**Note 6:** Defense Articles specific to Man Portable Air Defense Systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production equipment specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

**Note 7:** Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information is technical data that concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).

**Note 8:** Examples of gas turbine engine hot section exempted defense article components and technology are combustion chambers/liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; advanced cooled augmenters; and advanced cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), Ultra-Efficient Engine Technology (UEET).

**Note 9:** Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

a. IR countermeasures;

b. Classified techniques and capabilities;

c. Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival accuracy of less than five degrees (RMS) and RF emitter location of less than ten percent range error;

d. Providing the capability to reprogram; and

e. Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures

**Note 10:** Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; ''intelligent autonomy'' algorithms which define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band ''acoustic color,'' active acoustic ''fingerprint'' sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise. (Controlled under Category XI(a), (1) and (2) and in (b), (c), and (d)).

**Note 11:** The defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase ''suitable for military use'' applies to any articles or materials which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaties.

* An ''X'' in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.

## PART 127—VIOLATIONS AND PENALTIES

28. The authority citation for part 127 is revised to read to as follows:

**Authority:** Secs. 2, 38, and 42, Public Law 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2791); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 401; 22 U.S.C. 2651a; 22 U.S.C. 2779a; 22 U.S.C. 2780; Pub. L. 111–266.

29. Section 127.1 is revised to read as follows:

### § 127.1 Violations.

(a) Without first obtaining the required license or other written

approval from the Directorate of Defense Trade Controls, it is unlawful:

(1) To export or attempt to export from the United States any defense article or technical data or to furnish or attempt to furnish any defense service for which a license or written approval is required by this subchapter;

(2) To reexport or retransfer or attempt to reexport or retransfer any defense article, technical data, or defense service from one foreign end-user, end-use, or destination to another foreign end-user, end-use, or destination for which a license or written approval is required by this subchapter, including, as specified in § 126.16(h) and § 126.17(h) of this subchapter, any defense article, technical data, or defense service that was exported from the United States without a license pursuant to any exemption under this subchapter;

(3) To import or attempt to import any defense article whenever a license is required by this subchapter;

(4) To conspire to export, import, reexport, retransfer, furnish or cause to be exported, imported, reexported, retransferred or furnished, any defense article, technical data, or defense service for which a license or written approval is required by this subchapter.

(b) It is unlawful:

(1) To violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter.

(2) To engage in the business of brokering activities for which registration and a license or written approval is required by this subchapter without first registering or obtaining the required license or written approval from the Directorate of Defense Trade Controls. For the purposes of this subchapter, engaging in the business of brokering activities requires only one occasion of engaging in an activity as reflected in § 129.2(b) of this subchapter.

(3) To engage in the United States in the business of either manufacturing or exporting defense articles or furnishing defense services without complying with the registration requirements. For the purposes of this subchapter, engaging in the business of manufacturing or exporting defense articles or furnishing defense services requires only one occasion of manufacturing or exporting a defense article or furnishing a defense service.

(c) Any person who is granted a license or other approval or who acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, and all authorized persons to whom possession of the defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain temporary or permanent custody of a defense article exported from the United States or produced under an agreement described in part 124 of this subchapter, and irrespective of the number of intermediate transfers, are bound by the regulations of this subchapter in the same manner and to the same extent as the original owner or transferor.

(d) A person with knowledge that another person is then ineligible pursuant to §§ 120.1(c) or 126.7 of this subchapter may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to, and written authorization from, the Directorate of Defense Trade Controls:

(1) Apply for, obtain, or use any export control document as defined in § 127.2(b) of this subchapter for such ineligible person; or

(2) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any transaction which may involve any defense article or the furnishing of any defense service for which a license or approval is required by this subchapter or an exemption is available under this subchapter for export, where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

(e) No person may knowingly or willfully cause, or aid, abet, counsel, demand, induce, procure, or permit the commission of, any act prohibited by, or the omission of any act required by, 22 U.S.C. 2778 and 2779, or any regulation, license, approval, or order issued thereunder.

30. Section 127.2 is amended by revising paragraphs (a), (b) introductory text, (b)(1), (b)(2), and adding (b)(14), to read as follows:

**§ 127.2 Misrepresentation and omission of facts.**

(a) It is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting, transferring, reexporting, retransferring, obtaining, or furnishing any defense article, technical data, or defense service. Any false statement, misrepresentation, or omission of material fact in an export or temporary import control document will be considered as made in a matter within the jurisdiction of a department or agency of the United States for the purposes of 18 U.S.C. 1001, 22 U.S.C. 2778, and 22 U.S.C. 2779.

(b) For the purpose of this subchapter, *export or temporary import control documents* include the following:

(1) An application for a permanent export, reexport, retransfer, or a temporary import license and supporting documents.

(2) Shipper's Export Declaration or an Electronic Export Information filing.

* * * * *

(14) Any other shipping document that has information related to the export of the defense article or defense service.

31. Section 127.3 is revised to read as follows:

**§ 127.3 Penalties for violations.**

Any person who willfully:

(a) Violates any provision of § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or any rule or regulation issued under either § 38 or § 39 of the Act, or any undertaking specifically required by part 124 of this subchapter; or

(b) In a registration, license application, or report required by § 38 or § 39 of the Arms Export Control Act (22 U.S.C. 2778 and 2779) or by any rule or regulation issued under either section, makes any untrue statement of a material fact or omits a material fact required to be stated therein or necessary to make the statements therein not misleading, shall upon conviction be subject to a fine or imprisonment, or both, as prescribed by 22 U.S.C. 2778(c).

32. Section 127.4 is amended by revising paragraphs (a) and (c), and adding paragraph (d), to read as follows:

**§ 127.4 Authority of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers.**

(a) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure observance of this subchapter as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft. This applies whether the export is authorized by license or by written approval issued under this subchapter or by exemption.

* * * * *

(c) Upon the presentation to a U.S. Customs and Border Protection Officer of a license or written approval, or claim of an exemption, authorizing the export

of any defense article, the customs officer may require the production of other relevant documents and information relating to the proposed export. This includes an invoice, order, packing list, shipping document, correspondence, instructions, and the documents otherwise required by the U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement.

(d) If an exemption under this subchapter is used or claimed to export, transfer, reexport or retransfer, furnish, or obtain a defense article, technical data, or defense service, law enforcement officers may rely upon the authorities noted above, additional authority identified in the language of the exemption, and any other lawful means to investigate such a matter.

33. Section 127.7 is amended by revising paragraph (a) to read as follows:

**§ 127.7 Debarment.**

(a) *Debarment.* In implementing § 38 of the Arms Export Control Act, the Assistant Secretary of State for Political-Military Affairs may prohibit any person from participating directly or indirectly in the export, reexport and retransfer of defense articles, including technical data, or in the furnishing of defense services for any of the reasons listed below and publish notice of such action in the **Federal Register**. Any such prohibition is referred to as a debarment for purposes of this subchapter. The Assistant Secretary of State for Political-Military Affairs shall determine the appropriate period of time for debarment, which shall generally be for a period of three years. However, reinstatement is not automatic and in all cases the debarred person must submit a request for reinstatement and be approved for reinstatement before engaging in any export or brokering activities subject to the Arms Export Control Act or this subchapter.

* * * * *

34. Section 127.10 is amended by revising paragraph (a) to read as follows:

**§ 127.10 Civil penalty.**

(a) The Assistant Secretary of State for Political-Military Affairs is authorized to impose a civil penalty in an amount not to exceed that authorized by 22 U.S.C. 2778, 2779a, and 2780 for each violation of 22 U.S.C. 2778, 2779a, and 2780, or any regulation, order, license, or written approval issued thereunder. This civil penalty may be either in addition to, or in lieu of, any other liability or penalty which may be imposed.

* * * * *

35. Section 127.12 is amended by adding paragraph (b)(5), and revising paragraph (d), to read as follows:

**§ 127.12 Voluntary disclosures.**

* * * * *

(b) * * *

(5) Nothing in this section shall be interpreted to negate or lessen the affirmative duty pursuant to §§ 126.1(e), 126.16(h)(5), and 126.17(h)(5) of this subchapter upon persons to inform the Directorate of Defense Trade Controls of the actual or proposed sale, export, transfer, reexport, or retransfer of a defense article, technical data, or defense service to any country referred to in § 126.1 of this subchapter, any citizen of such country, or any person acting on its behalf.

* * * * *

(d) *Documentation.* The written disclosure should be accompanied by copies of substantiating documents. Where appropriate, the documentation should include, but not be limited to:

(1) Licensing documents (*e.g.,* license applications, export licenses, and end-user statements), exemption citation, or other authorization description, if any;

(2) Shipping documents (*e.g.,* Shipper's Export Declarations; Electronic Export Information filing, including the Internal Transaction Number), air waybills, and bills of laden, invoices, and any other associated documents);

(3) Any other relevant documents must be retained by the person making the disclosure until the Directorate of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

* * * * *

## PART 129—REGISTRATION AND LICENSING OF BROKERS

36. The authority citation for part 129 continues to read as follows:

**Authority:** Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

37. Section 129.6 is amended by revising paragraph (b)(2) to read as follows:

**§ 129.6 Requirements for License/Approval.**

* * * * *

(b) * * *

(2) Brokering activities that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea, except in the case of the defense articles or defense services specified in § 129.7(a) of this subchapter, for which prior approval is always required.

38. Section 129.7 is amended by revising paragraphs (a)(1)(vii) and (a)(2) to read as follows:

**§ 129.7 Prior Approval (License).**

(a) * * *

(1) * * *

(vii) Foreign defense articles or defense services (other than those that are arranged wholly within and destined exclusively for the North Atlantic Treaty Organization, any member country of that Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea (*see* §§ 129.6(b)(2) and 129.7(a)).

(2) Brokering activities involving defense articles or defense services covered by, or of a nature described by part 121, of this subchapter, in addition to those specified in § 129.7(a), that are designated as significant military equipment under this subchapter, for or from any country not a member of the North Atlantic Treaty Organization, Australia, Israel, Japan, New Zealand, or the Republic of Korea whenever any of the following factors are present:

* * * * *

Dated: November 7, 2011.

**Ellen O. Tauscher,**

*Under Secretary, Arms Control and International Security, Department of State.*

[FR Doc. 2011–29328 Filed 11–21–11; 8:45 am]

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Part III

## United States Patent and Trademark Office

37 CFR Parts 1 and 41

Rules of Practice Before the Board of Patent Appeals and Interferences in *Ex Parte* Appeals; Final Rule

**DEPARTMENT OF COMMERCE**

**United States Patent and Trademark Office**

**37 CFR Parts 1 and 41**

**[No. PTO–P–2009–0021]**

**RIN 0651–AC37**

## Rules of Practice Before the Board of Patent Appeals and Interferences in *Ex Parte* Appeals

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO or Office) amends the rules governing practice before the Board of Patent Appeals and Interferences (Board or BPAI) in *ex parte* patent appeals. The Office amends the rules to: Remove several of the briefing requirements for an appeal brief, provide for the Board to take jurisdiction over the appeal earlier in the appeal process, no longer require examiners to acknowledge receipt of reply briefs, create specified procedures under which an appellant can seek review of an undesignated new ground of rejection in either an examiner's answer or in a Board decision, provide that the Board will presume that the appeal is taken from the rejection of all claims under rejection unless cancelled by an applicant's amendment, and clarify that, for purposes of the examiner's answer, any rejection that relies upon Evidence not relied upon in the Office action from which the appeal is taken shall be designated as a new ground of rejection. The Office also withdraws a previously published final rule that never went into effect.

**DATES:** *Effective Date:* This rule is effective on January 23, 2012 except withdrawal of the final rule published June 10, 2008 (73 FR 32938) and delayed indefinitely on December 10, 2008 (73 FR 74972) is effective November 22, 2011.

*Applicability Date:* This rule is applicable to all appeals in which a notice of appeal is filed on or after January 23, 2012.

**FOR FURTHER INFORMATION CONTACT:** Linda Horner, Administrative Patent Judge, Board of Patent Appeals and Interferences, by telephone at (571) 272–9797, or by mail addressed to: Mail Stop Interference, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Linda Horner.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 30, 2007, the Office published a notice of proposed rulemaking governing practice before the Board in *ex parte* patent appeals (72 FR 41472 (July 30, 2007)). The notice was also published in the Official Gazette. 1321 Off. Gaz. Pat. Office 95 (Aug. 21, 2007). The public was invited to submit written comments. Comments were to be received on or before September 28, 2007.

On June 10, 2008, a final rulemaking was then published in the **Federal Register** (73 FR 32938 (June 10, 2008)). This final rule stated that the effective and applicability date was December 10, 2008. On June 9, 2008, the Office published a 60-day **Federal Register** notice (73 FR 32559 (June 9, 2008)) requesting the Office of Management and Budget (OMB) establish a new information collection for BPAI items in the final rule and requesting public comment on the burden impact of the final rule under the provisions of the Paperwork Reduction Act (PRA). On October 8, 2008, the Office published a 30-day **Federal Register** notice (73 FR 58943 (Oct. 8, 2008)) stating that the proposal for the collection of information under the final rule was being submitted to OMB and requesting that comments on the proposed information collection be submitted to OMB. Because the information collection process had not been completed by the original effective and applicability date of the final rule, the Office published a **Federal Register** notice (73 FR 74972 (Dec. 10, 2008)) notifying the public that the effective and applicability date of the final rule was not December 10, 2008, and that the effective and applicability date would be delayed until a subsequent notice.

On January 20, 2009, the Assistant to the President and Chief of Staff instructed agencies via a memorandum entitled, ''Regulatory Review,'' (74 FR 4435 (Jan. 26, 2009)) to consider seeking comments for an additional 30 days on rules that were published in the **Federal Register** and had not yet become effective by January 20, 2009. On January 21, 2009, the Office of Management and Budget issued a memorandum entitled, ''Implementation of Memorandum Concerning Regulatory Review,'' (available at *http://www.whitehouse.gov/sites/default/files/omb/assets/agencyinformation_memoranda_2009_pdf/m09–08.pdf*) which provided agencies further guidance on such rules that had not yet taken effect. For such rules, both memoranda stated that agencies should consider reopening the rulemaking process to review any significant concerns involving law or policy that have been raised.

On December 22, 2009, the Office published an Advance Notice of Proposed Rulemaking (ANPRM) proposing further modifications to the indefinitely delayed 2008 final rule and seeking public comment via a public roundtable and written comment (74 FR 67987 (Dec. 22, 2009)).

In light of the comments received to these notices, the Office then published a notice of proposed rulemaking (NPRM) in the **Federal Register** (75 FR 69828 (Nov. 15, 2010)), which proposed to rescind the indefinitely delayed 2008 final rule and proposed new changes to the rules of practice before the Board in *ex parte* appeals. The public was invited to submit written comments. Comments were to be received on or before January 14, 2011. Comments received on or before January 14, 2011, were considered.

The Office also considered three comments received after January 14, 2011. The Office now publishes this final rule taking into consideration the comments received to the NPRM.

The Office received a comment offering an alternative rendition of the procedural history of these rules and claiming that OMB rejected the Office's original Information Collection Request. The Preamble of the NPRM accurately reflects the history of this rule. Accordingly, no changes have been made to the description of the procedural history in the Preamble of the final rule. Furthermore, OMB approved the Office's original Information Collection Request. *See Notice of Office of Management and Budget Action,* ICR Ref. No. 200809–0651–003 (Dec. 22, 2009), *http://www.reginfo.gov/public/do/PRAMain* hyperlink; then search 0651–0063; then follow ''Approved with change'' hyperlink. OMB has also pre-approved the Information Collection Request associated with these final rules. *See Notice of Office of Management and Budget Action,* ICR Ref. No. 201010–0651–001 (Jan. 4, 2011), *http://www.reginfo.gov/public/do/PRAMain* hyperlink; then search 0651–0063; then follow ''Preapproved'' hyperlink.

The Office received two comments suggesting that the Board already implemented the delayed 2008 final rule (73 FR 32938 (June 10, 2008), implementation of which was indefinitely delayed by 73 FR 74972 (Dec. 10, 2008)). This is not true. The Office has not implemented the indefinitely delayed 2008 final rule.

One commenter suggested that the fact that the Board sometimes has stated

that an appellant must ''map claims'' indicates the delayed 2008 final rule is already in effect. Since 2004, the Office has used this language to indicate that the appellant had not explained the subject matter defined in each independent claim by reference to the specification by page and line number, and to the drawing, if any, by reference characters, as required by the 2004 regulations. The delayed 2008 regulations required annotation in addition to mapping. Those regulations have not been implemented or enforced with respect to any applicant. Another commenter suggested that the indefinitely delayed 2008 regulations must be in effect because the 2004 regulations permitted applicants to raise arguments in either the appeal brief or reply brief. This is an incorrect reading of the 2004 regulations. The inability to raise new arguments in a reply brief is inherent in the nature of a reply brief; it must reply to either an argument or response in an answer or the failure to include a response in an answer. The indefinitely delayed 2008 regulations made this requirement clearer, but it has always been a requirement.

The Board rules as published in 37 CFR 41.1–41.81 (2010) will remain in effect until the changes set forth in the instant final rule take effect on the effective date. The Office also withdraws the indefinitely delayed 2008 final rule (73 FR 32938 (June 10, 2008)) that never went into effect. Therefore, any appeal brief filed in an application or *ex parte* reexamination proceeding in which a notice of appeal is filed on or after the instant effective date must be filed in compliance with final Bd.R. 41.37 set forth in this final rule.

**Purposes for the Rule Changes**

One purpose of this final rule is to ensure that the Board has adequate information to decide *ex parte* appeals on the merits, while not unduly burdening appellants or examiners with unnecessary briefing requirements. In particular, the goal of this final rule is to effect an overall lessening of the burden on appellants and examiners to present an appeal to the Board. For example, statements of the status of claims, the status of amendments, and the grounds of rejection to be reviewed on appeal are no longer required in the appeal brief (final Bd.R. 41.37) or in the examiner's answer. Similarly, the final rule no longer requires appellants to file an evidence appendix or a related proceedings appendix (final Bd.R. 41.37). Because much of this information is already available in the Image File Wrapper, it is unnecessary for appellants or examiners to provide this information to the Board. Moreover, by eliminating these briefing requirements, the Office expects to reduce the number of non-compliant appeal briefs and the number of examiner's answers returned to the examiner due to non-compliance, which are a significant cause of delays on appeal. *See USPTO, Top Eight Reasons Appeal Briefs are Non-Compliant, http://www.uspto.gov/ip/boards/bpai/procedures/top_8_reasons_appeal_brf_dec09.pdf.*

Another purpose of this final rule is to eliminate any gap in time from the end of briefing to the commencement of the Board's jurisdiction. For example, under the final rule, the Board takes jurisdiction upon the earlier of the filing of a reply brief or the expiration of the time in which to file a reply brief (final Bd.R. 41.35(a)). Examiners are no longer required to acknowledge receipt of the reply brief (Bd.R. 41.43 [removed]).

The final rule is also intended to clarify and simplify petitions practice on appeal. For example, except under limited circumstances, any information disclosure statement or petition filed while the Board possesses jurisdiction over the proceeding will be held in abeyance until the Board's jurisdiction ends (final Bd.R. 41.35(d)). Also, in response to public comments, and based on a comprehensive survey of case law from the United States Court of Appeals for the Federal Circuit (Federal Circuit) and United States Court of Customs and Patent Appeals (CCPA), the Office will provide improved guidance in the Manual of Patent Examining Procedure (MPEP), discussed *infra,* as to what constitutes a new ground of rejection in an examiner's answer. The final rule explicitly sets forth the procedure under which an appellant can seek review of the Office's failure to designate a new ground of rejection in either an examiner's answer (final Bd.R. 41.40) or in a Board decision (final Bd.R. 41.50(c)).

Another purpose of this final rule is to reduce confusion as to which claims are on appeal. For example, under the final rule, the Board will presume that the appeal is taken from the rejection of all claims under rejection unless cancelled by an applicant's amendment (final Bd.R. 41.31(c)). This rule simplifies practice for appellants who seek review of all claims under rejection—the majority of appellants—by obviating the need to enumerate the rejected claims that are being appealed. Under the previous practice, if an appellant incorrectly listed the claims on appeal, or was silent in the brief as to some of the claims under rejection, then the Office assumed that such claims were not on appeal, and noted that those non-appealed claims should be cancelled by the examiner. *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) (holding that when appellant does not appeal some of the claims under rejection and does not challenge the Examiner's rejection of these claims, the Board will treat these claims as withdrawn from the appeal, which operates as an authorization for the Examiner to cancel those claims from the application). This final rule avoids the unintended cancellation of claims by the Office due to appellant's mistake in the listing of the claims in either the notice of appeal or in the appeal brief. This final rule replaces the Office's procedure under *Ghuman* and also simplifies practice for examiners by no longer requiring examiners to cancel non-appealed claims.

The Supplementary Information in this notice provides: (1) An explanation of the final rule, (2) a discussion of the differences between the final rule and the proposed rule, (3) a discussion of the comments received to the NPRM, (4) a discussion of rule making considerations and comments received regarding the discussion of rule making considerations in the NPRM and (5) a copy of the amended regulatory text.

Rules in 37 CFR part 1 are denominated as ''Rule x'' in this supplementary information. A reference to Rule 1.136(a) is a reference to 37 CFR 1.136(a) (2010).

Rules in 37 CFR part 11 are denominated as ''Rule x'' in this supplementary information. A reference to Rule 11.18(a) is a reference to 37 CFR 11.18(a) (2010).

Rules in 37 CFR part 41 are denominated as ''Bd.R. x'' in this supplementary information. For example, a reference to Bd.R. 41.3 is a reference to 37 CFR 41.3 (2010) (as first published in 69 FR 50003 (August 12, 2004)).

Changes proposed in the NPRM are denominated as ''proposed Bd.R. x'' in this supplementary information. A reference to ''proposed Bd.R. 41.30'' is a reference to the proposed rule as set forth in 75 FR 69828, 69846 (Nov. 15, 2010).

Final rules are denominated as ''final Bd.R. x'' in this supplementary information. A reference to final Bd.R. x is a reference to the rule that will take effect on the effective date of this final rule.

The Board has jurisdiction to consider and decide *ex parte* appeals in patent applications (including reissue, design and plant patent applications) and *ex parte* reexamination proceedings.

The final rule does not change any of the rules relating to *inter partes* reexamination appeals. Nor does the final rule change any of the rules relating to contested cases.

For purposes of the NPRM, some paragraphs that were proposed to be deleted were shown as ''reserved.'' These ''reserved'' paragraphs have been deleted entirely in the final rule, and the remaining paragraphs in each section have been renumbered, as appropriate.

**Explanation of the Final Rule**

The notable changes to the rules are: (1) The Board will presume that an appeal is taken from the rejection of all claims under rejection unless cancelled by an amendment filed by appellant (final Bd.R. 41.31(c)); (2) the Board will take jurisdiction upon the filing of a reply brief or the expiration of time in which to file such a reply brief, whichever is earlier (final Bd.R. 41.35(a)); (3) the requirements to include statements of the status of claims, status of amendments, and grounds of rejection to be reviewed on appeal and the requirements to include an evidence appendix and a related proceedings appendix are eliminated from the appeal brief (final Bd.R. 41.37(c)); (4) the Board may apply default assumptions if a brief omits a statement of the real party-in-interest or a statement of related cases (final Bd.R. 41.37(c)(1)(i) and (ii)); (5) for purposes of the examiner's answer, any rejection that relies upon Evidence not relied upon in the Office action from which the appeal is taken (as modified by any advisory action) shall be designated as a new ground of rejection (final Bd.R. 41.39(a)(2)); (6) an appellant can await a decision on a petition seeking review of an examiner's failure to designate a rejection in the answer as a new ground of rejection prior to filing a reply brief (final Bd.R. 41.40) and thereby avoid having to file a request for extension of time in which to file the reply brief; and (7) the examiner's response to a reply brief is eliminated (final Bd.R. 41.43 [removed]). A more detailed discussion of the final rule follows.

Further information relevant to particular rules appears in the analysis of comments portion of this final rule.

**Part 1**

*Termination of Proceedings*

Final Rule 1.197 revises the title of this section and deletes paragraph (a), the provision that sets forth when jurisdiction passes from the Board to the examiner after a decision has been issued by the Board. The operative language of this paragraph has been incorporated into final Bd.R. 41.54, except that ''transmittal of the file'' has been omitted. Most patent application files are electronic files (Image File Wrapper files), not paper files. Accordingly, a paper file is no longer ''transmitted'' to the examiner. The changes to final Rule 1.197 and final Bd.R. 41.54 are intended to more accurately reflect the fact that files are handled electronically within the Office, and do not imply that there would be a change in the practice for passing jurisdiction back to the examiner after decision by the Board—the process remains the same under the final rule.

**Part 41**

*Authority*

The listing of authority for Part 41 is revised to add references to 35 U.S.C. 132, 133, 306, and 315. Section 132 states that the Director shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant. Section 133 provides that upon failure of the applicant to prosecute the application within six months after any action therein, the application shall be regarded as abandoned. Section 306 establishes the patent owner's right to appeal in an *ex parte* reexamination proceeding. Section 315 establishes the right to appeal in an *inter partes* reexamination proceeding.

**Subpart A**

*Citation of Authority*

Bd.R. 41.12 is amended by deleting the following requirements: (1) To cite to particular case law reporters, and (2) to include parallel citations to multiple reporter systems. Because members of the Board have access to both the West Reporter System and the United States Patents Quarterly, it is unnecessary for appellants to cite to both reporters. The rule indicates a Board preference, not a requirement, for citations to certain reporters and for limited use of non-binding authority. The requirement to include pinpoint citations, whenever a specific holding or portion of an authority is invoked, is retained.

The final rule states that appellants should provide a copy of an authority if the authority is not an authority of the Office and is not reproduced in the United States Reports or the West Reporter System. This provision is designed to ensure that a full record is before the judges to allow an efficient and timely decision to be made on the merits of the case. A BPAI precedential decision is binding on the Board and is considered an ''authority of the Office'' and thus does not fall within the ambit of final Bd.R. 41.12(d).

**Subpart B**

*Definitions*

Bd.R. 41.30 is amended to add a definition of ''Record'' so that, when subsequent sections of Subpart B refer to the ''Record'', it is clear what constitutes the official record on appeal. The final rule states that the official record contains the items listed in the content listing of the Image File Wrapper or the official file of the Office if other than the Image File Wrapper, excluding any amendments, Evidence, or other documents that were not entered. Because an examiner's refusal to enter an amendment, Evidence, or other documents is a petitionable matter that is not subject to review by the Board, the exclusion of such un-entered documents from the definition of ''Record'' reflects the fact that the Board's review of patentability determinations is properly based on the record of all entered documents in the file. An information disclosure statement or petition that is held in abeyance while the Board possesses jurisdiction over the proceeding is not an entered document and therefore is excluded from the definition of ''Record'' until such time as it is entered. The definition of ''Record'' includes the items listed in the content listing of the Image File Wrapper because, in some cases, physical items that form part of the official file are not able to be scanned into the Image File Wrapper and are maintained elsewhere, such as in an artifact file. Some examples of such items include original drawings in design patent applications and sequence listings. In such cases, the Image File Wrapper will include an entry in the content listing that points to this artifact file. The final rule further clarifies that in the case of an issued patent being reissued or reexamined, the Record further includes the Record of the patent being reissued or reexamined. The Office further notes that all references listed on an Information Disclosure Statement (*i.e.,* PTO–Form PTO/SB/08a or 08b), which have been indicated as having been considered by the examiner, or listed on a PTO–Form 892 are included in the definition of Record even if each of the so listed references does not separately appear in the content listing of the Image File Wrapper.

Final Bd.R. 41.30 adopts the definition of ''Evidence'' from Black's Law Dictionary to provide clarity regarding the use of that term in Subpart B. Toward that end, final Bd.R. 41.30

makes clear that for the purposes of Subpart B, ''Evidence'' does not encompass dictionaries. Excluding dictionaries from the definition of ''Evidence'' thus allows appellants to refer to dictionaries in their briefs, which would otherwise be precluded under final Bd.R. 41.33(d)(2) (absent existence of one of the enumerated exceptions). It further allows examiners to refer to dictionaries in the examiner's answers without automatically rendering a rejection a new ground under final Bd.R. 41.39(a)(2). Treating dictionaries in this manner is consistent with Supreme Court and Federal Circuit precedent, which contemplate that such materials may be consulted by tribunals ''at any time.'' *See, e.g., Nix* v. *Hedden,* 149 U.S. 304, 307 (1893) (citations omitted) (admitting dictionaries to understand the ordinary meaning of terms ''not as evidence, but only as aids to the memory and understanding of the court''); *Phillips* v. *AWH Corp.,* 415 F.3d 1303, 1322–23 (Fed. Cir. 2005) (*en banc*) (''[J]udges are free to consult dictionaries and technical treatises at any time in order to better understand the underlying technology and may also rely on dictionary definitions when construing claim terms, so long as the dictionary definition does not contradict any definition found in or ascertained by a reading of the patent documents.'') (citation omitted); *In re Boon,* 439 F.2d 724, 727–28 (CCPA 1971) (holding citation to dictionary was not tantamount to the assertion of a new ground of rejection ''where such a reference is a standard work, cited only to support a fact judicially noticed and, as here, the fact so noticed plays a minor role, serving only to fill in the gaps which might exist in the evidentiary showing made by the Examiner to support a particular ground for rejection.'' (emphasis and internal quotations omitted)). Thus, the Office feels it is logical to permit the applicant and examiner to submit them to the Board during the briefing stage.

*Appeal to the Board*

Bd.R. 41.31(a) is amended to add preamble language to make clear that an appeal to the Board is taken by filing a notice of appeal. This change is not intended to change the current practice of the Office. The Office continues to require appellants to file a notice of appeal in order to appeal an adverse decision of the examiner to the Board.

Bd.R. 41.31(b) is amended to make clear that the signature requirements of Rules 1.33 and 11.18(a) do not apply to the notice of appeal. This change adds a reference to Rule 11.18(a) to avoid any conflict between the rules of practice in *ex parte* appeals and the rules governing practice by registered practitioners before the Office.

Bd.R. 41.31(c) is amended so that an appeal, when taken, is presumed to seek review of all of the claims under rejection unless claims are cancelled by an amendment filed by the applicant and entered by the Office. This change obviates the need for the majority of appellants who seek review of all claims under rejection to affirmatively state (in the notice of appeal and/or in the status of claims section of the appeal brief) which claims are on appeal. Rather, under final Bd.R. 41.31(c), the Board presumes that an appellant intends to appeal all claims under rejection except for those that have been cancelled. This change avoids the unintended cancellation of claims by the Office due to an appellant's mistake in the listing of the claims in either the notice of appeal or in the appeal brief. Under previous practice, if an appellant incorrectly listed the claims on appeal, or was silent in the brief as to any of the claims under rejection, then the Office often assumed that such claims were not on appeal, and noted that those non-appealed claims should be cancelled by the examiner. *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) (holding that when appellant does not appeal some of the claims under rejection and does not challenge the Examiner's rejection of these claims, the Board will treat these claims as withdrawn from the appeal, which operates as an authorization for the Examiner to cancel those claims from the application). The final rule avoids potential unintended cancellation of claims due to oversight or mistake by appellants in listing the claims on appeal. This final rule replaces the Office's procedure under *Ghuman* and simplifies practice for examiners by no longer requiring examiners to cancel non-appealed claims. Any appellant who wishes to appeal fewer than all rejected claims should file an amendment cancelling the non-appealed claims. If an appellant does not file an amendment cancelling claims that the appellant does not wish to appeal, but then also fails to provide any argument in the appeal brief directed to those claims, then the Board has discretion to simply affirm any rejections against such claims. *See, e.g., Hyatt* v. *Dudas,* 551 F.3d 1307, 1314 (Fed. Cir. 2008) (appellant waives any argument about a ground of rejection that he or she does not contest on appeal to the Board, and the Board may simply affirm the rejection).

*Amendments and Affidavits or Other Evidence After Appeal*

The title of Bd.R. 41.33 is revised by replacing ''evidence'' with ''Evidence'' to refer to the definition added in final Bd.R. 41.30.

Bd.R. 41.33(c) is revised to delete the cross-reference to Bd.R. 41.50(c). As noted *infra,* Bd.R. 41.50(c) is amended so that it is no longer applicable to final Bd.R. 41.33(c).

Bd.R. 41.33(d)(1) is revised to replace ''evidence'' with ''Evidence'' to refer to the definition added in final Bd.R. 41.30.

Bd.R. 41.33(d)(2) is revised to replace ''evidence'' with ''Evidence'' to refer to the definition added in final Bd.R. 41.30.

Bd.R. 41.33 is not substantively changed except as to submission of dictionaries after the date of filing an appeal. Both Bd.R. 41.33 and final Bd.R. 41.33 otherwise restrict the types of amendments and evidence that can be filed after the date of filing an appeal. This approach is designed to promote efficiency of the Board in its review by ensuring that the Board has the benefit of the examiner's final evaluation of the weight and sufficiency of any evidence relied upon by appellants prior to the Board rendering a decision on appeal.

*Jurisdiction Over Appeal*

Bd.R. 41.35(a) is amended to add a heading and to provide that jurisdiction over the appeal passes to the Board upon the filing of a reply brief or the expiration of the time in which to file such a reply brief, whichever is earlier. This change is necessary because Bd.R. 41.35(a) provides that the Board acquires jurisdiction upon transmittal of the file to the Board. The large majority of patent application files are electronic files (Image File Wrapper files), not paper files. Accordingly, in most cases a paper file is no longer ''transmitted'' to the Board.

The Board intends to continue sending a docket notice as a courtesy to appellants to indicate that the Board has assigned an appeal number to the appeal. By having the Board's jurisdiction commence immediately upon the filing of a reply brief or the expiration of the time in which to file such a reply brief, the Board must take no affirmative steps prior to assuming jurisdiction and no gap in time will exist from the end of the briefing to the commencement of jurisdiction by the Board.

Bd.R. 41.35(b) is amended by moving some text to final Bd.R. 41.35(e), adding a new paragraph, and by adding new text to make clear when the Board's

jurisdiction ends so that no gaps in time exist between the end of the Board's jurisdiction and further action by the examiner.

Bd.R. 41.35(c) is amended to add a heading and a cross-reference to a relevant section of the rule.

Final Bd.R. 41.35(d) is added to provide that, except for petitions authorized by part 41 of this title, the Board will not return or remand an application for consideration of an information disclosure statement or a petition filed while the Board possesses jurisdiction, and that consideration of such filings will be held in abeyance until the Board's jurisdiction ends. The Board's jurisdiction begins upon the filing of the reply brief or upon the expiration of the time for filing a reply brief. Therefore, under both Bd.R. 41.33(d)(2) and final Bd.R. 41.33(d)(2), the filing of an information disclosure statement during the Board's jurisdiction constitutes the introduction of untimely Evidence before the Board. Similarly, because Rule 1.181 provides that petitions must be filed within two months of the mailing date of the action or notice from which relief is requested, and because the Board's jurisdiction begins up to two months after the mailing date of the examiner's answer (assuming no petition under Rule 1.181 is filed), it follows that all petitions relating to the examination phase of the application or reexamination proceeding ought to be filed prior to the time the Board takes jurisdiction. It is in the interest of compact prosecution that the Office not delay a decision on appeal for consideration of untimely Evidence and petitions. Final Bd.R. 41.35(d) excludes ''petitions authorized by this part.'' For example, petitions authorized by part 41 include petitions under Bd.R. 41.3 to the Chief Administrative Patent Judge.

Final Bd.R. 41.35(e) is added with a new heading and it contains the text previously in Bd.R. 41.35(b). This provision gives the Board the authority to return an appeal to the examiner if the Board deems that a file is not complete or is not in compliance with the requirements of Subpart B.

*Appeal Brief—Timing and Fee; and Failure to File a Brief*

Bd.R. 41.37(a) and (b) are amended by adding new headings.

*Appeal Brief—Content of Appeal Brief—Preamble*

Bd.R. 41.37(c)(1) is amended to add a heading, and to add the introductory phrase ''Except as otherwise provided in this paragraph'' to clarify that several of the content requirements listed in paragraph (c)(1) contain exceptions that may result in an appeal brief containing fewer than all items listed in paragraph (c)(1). Bd.R. 41.37(c)(1) is further amended to correct the cross-references in light of further changes to this section, discussed *infra.*

*Appeal Brief—Content of Appeal Brief—Real Party in Interest*

Bd.R. 41.37(c)(1)(i) is amended to provide that the statement identifying the real party in interest should be accurate as of the date of filing of the appeal brief. Bd.R. 41.37(c)(1)(i) is also amended to allow the Board to assume that, if the statement of real party in interest is omitted from the appeal brief, then the named inventors are the real party in interest. This final rule states that the Office ''may'' make the assumption. Thus, the Office is not required to make the assumption if it is aware of information to the contrary. These changes are intended to decrease the burden on appellants by allowing appellants to omit this statement if the named inventors are the real party in interest. The purpose of this section is to enable judges to determine whether they have a conflict of interest with the real parties in the case and then to appropriately recuse themselves if such a conflict of interest is found. The information required in final Bd.R. 41.37(c)(1)(i) is the minimum information needed by the Board to effectively make this determination.

*Appeal Brief—Content of Appeal Brief—Related Appeals and Interferences*

Bd.R. 41.37(c)(1)(ii) is amended to limit the required disclosure of related appeals, interferences and judicial proceedings (collectively ''related cases'') to only those which: (1) Involve an application or patent owned by the appellant or assignee, (2) are known to appellant, the appellant's legal representative, or assignee, and (3) may be related to, directly affect or be directly affected by, or have a bearing on the Board's decision. Bd.R. 41.37(c)(1)(ii) is also amended to allow appellants to omit the statement entirely if there are no such related cases, and to provide a default assumption for the Office in the event the statement is omitted, so that a statement that there are ''no known related cases'' is not required and that fact ''may'' be inferred from the absence of a statement. The final rule also no longer requires filing of copies of decisions in related cases.

*Appeal Brief—Content of Appeal Brief—Status of Claims [Deleted]*

Bd.R. 41.37(c)(1)(iii) is amended to delete the requirement for the appeal brief to contain an indication of the status of claims.

*Appeal Brief—Content of Appeal Brief—Status of Amendments [Deleted]*

Bd.R. 41.37(c)(1)(iv) is amended to delete the requirement for the appeal brief to contain an indication of the status of amendments filed subsequent to final rejection.

*Appeal Brief—Content of Appeal Brief—Summary of Claimed Subject Matter*

Bd.R. 41.37(c)(1)(v) is renumbered as final Bd.R. 41.37(c)(1)(iii) and is further amended to require that appellants provide a concise explanation of the subject matter defined in each of ''the rejected independent claims'' rather than ''each of the independent claims involved in the appeal.'' Similarly, final Bd.R. 41.37(c)(1)(iii) is amended to further require that the concise explanation identify the corresponding structure, material, or acts for each ''rejected independent claim'' when the claim contains a means or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph. Under final Bd.R. 41.31(c), discussed *supra,* the Board will presume that all rejections made in the Office Action from which the appeal was taken are before it on appeal, unless appellant cancels the claim(s) subject to a particular rejection. Final Bd.R. 41.37(c)(1)(iii) also maintains the requirement that the concise explanation identify the corresponding structure, material, or acts for each dependent claim argued separately when the claim contains a means or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph.

Final Bd.R. 41.37(c)(1)(iii) is further amended to require that the concise explanation refer to the specification ''in the Record'' by page and line number ''or by paragraph number.'' The change incorporates the definition of *Record* from final Bd.R. 41.30 and makes clear that reference to the specification by paragraph number in lieu of page and line number is permissible.

Additionally, final Bd.R. 41.37(c)(1)(iii) is amended to clarify that reference to the pre-grant patent application publication is not sufficient to satisfy the requirements of the summary of claimed subject matter.

*Appeal Brief—Content of Appeal Brief—Grounds of Rejection to be Reviewed on Appeal [Removed]*

Bd.R. 41.37(c)(1)(vi) which required appellants to provide a statement of the grounds of rejection from the brief is removed. Under final Bd.R. 41.31(c), discussed *supra,* the Board will

presume that all claims under rejection are before it on appeal, unless applicant cancels the claim(s) subject to a particular rejection. Under final Bd.R. 41.39(a)(1), discussed *infra,* the examiner's answer is deemed to incorporate all of the grounds of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory action and pre-appeal brief conference decision), unless the answer expressly withdraws a ground of rejection. Moreover, under final Bd.R. 41.37(c)(1)(iv), discussed *infra,* the headings of the argument section of the brief shall reasonably identify the ground of rejection being contested. Therefore, it is unnecessary for the appeal brief to contain a separate statement of the grounds of rejection on appeal.

*Appeal Brief—Content of Appeal Brief—Argument*

Bd.R. 41.37(c)(1)(vii) is renumbered as final Bd.R. 41.37(c)(1)(iv). Subparagraph (vii) is deleted. Final Bd.R. 41.37(c)(1)(iv) is amended to clarify that the argument section should specifically explain why the examiner erred as to each ground of rejection contested by appellants. The final rule also provides that, except as provided for in final Bd.R. 41.41, 41.47, and 41.52, any arguments not included in the appeal brief will not be considered by the Board ''for purposes of the present appeal.'' Additionally, final Bd.R. 41.37(c)(1)(iv) further requires that each ground of rejection argued be set forth in a separate section with a heading that reasonably identifies the ground being argued therein. Further, the final rule requires that any claim(s) argued separately or as a subgroup be placed under a separate subheading that identifies the claim(s) by number.

The Board will treat as waived, for purposes of the present appeal, any arguments not raised by appellant. *See Hyatt* v. *Dudas,* 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived); *In re Watts,* 354 F.3d 1362, 1368 (Fed. Cir. 2004) (declining to consider the appellant's new argument regarding the scope of a prior art patent when that argument was not raised before the Board); and *In re Schreiber,* 128 F.3d 1473, 1479 (Fed. Cir. 1997) (declining to consider whether prior art cited in an obviousness rejection was non-analogous art when that argument was not raised before the Board).

The final rule permits the Board to refuse to consider arguments not raised in the appeal brief, except as provided in final Bd.R. 41.41, 41.47, and 41.52. This language in the final rule is substantially the same as in Bd.R. 41.37(c)(1)(vii), which states that ''[a]ny arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown.'' Final Bd.R. 41.41, 41.47, and 41.52 have provisions allowing certain new arguments in reply briefs, at oral hearing, or in requests for rehearing which ensure that appellants have a full and fair opportunity to be heard before the Board. The final rule clarifies that the Board's right to refuse consideration of arguments not raised is ''for purposes of the present appeal'' so as to clarify that such right of refusal does not extend to subsequent Board appeals in the same or related applications. *See Abbott Labs.* v. *TorPharm, Inc.,* 300 F.3d 1367, 1379 (Fed. Cir. 2002) (''[P]recedent has long supported the right of an applicant to file a continuation application despite an unappealed adverse Board decision, and to have that application examined on the merits. Where the Patent Office has reconsidered its position on patentability in light of new arguments or evidence submitted by the applicant, the Office is not forbidden by principles of preclusion to allow previously rejected claims.'' (internal citation omitted)).

Final Bd.R. 41.37(c)(1)(iv) is also amended to clarify the proper use of headings and to require the use of subheadings in order to clearly set out the ground of rejection and the specific claims to which each argument presented applies. These headings and subheadings will make certain that arguments are not overlooked by the examiner or the Board. The content requirements of this paragraph will not be interpreted as requiring verbatim recitation of the ground being contested and briefs will not be held non-compliant for minor formatting issues.

*Appeal Brief—Content of Appeal Brief—Claims Appendix*

Bd.R. 41.37(c)(1)(viii) is renumbered as final Bd.R. 41.37(c)(1)(v). Subparagraph (viii) is deleted. Final Bd.R. 41.37(c)(1)(v) is identical to Bd.R. 41.37(c)(1)(viii) and requires appellants to include a claims appendix with the appeal brief containing ''a copy of the claims involved in the appeal.'' Because final Bd.R. 41.31(c) requires the Board to presume that all rejections made in the Office Action from which the appeal was taken are before it on appeal unless appellant cancels the claim(s) subject to a particular rejection, the claims appendix must include all claims under rejection in the Office action from which the appeal is taken unless cancelled by an amendment filed by the applicant and entered by the Office.

*Appeal Brief—Content of Appeal Brief—Evidence Appendix*

Bd.R. 41.37(c)(1)(ix), which required appellants to include an evidence appendix with the brief, is deleted.

While it is no longer a requirement to include an evidence appendix, the Office strongly encourages and appreciates receiving copies of the evidence relied upon (*e.g.,* copies of declarations and affidavits, evidence of secondary considerations, *etc.*). This ensures that the Board is considering the proper evidence and avoids any confusion as to the particular evidence referenced in the appeal brief. In the alternative, the Board recommends that appellants clearly identify in the appeal brief the evidence relied upon using a clear description of the evidence along with the date of entry of such evidence into the Image File Wrapper.

*Appeal Brief—Content of Appeal Brief—Related Proceedings Appendix*

Bd.R. 41.37(c)(1)(x), which required appellants to include a related proceedings appendix with the brief, is deleted.

While it is no longer a requirement to include a related proceedings appendix, the Office appreciates receiving copies of decisions or relevant papers from related proceedings. This ensures that the Board can efficiently consider the related proceedings information. In the alternative, the Board recommends that appellants clearly identify in the appeal brief any decisions or relevant documents from related proceedings using a clear description of the related proceeding, so that the Board can quickly and efficiently obtain copies of any such relevant documents.

*Appeal Brief—New or Non-Admitted Amendments or Evidence*

Bd.R. 41.37(c)(2) is amended to add a sentence to make clear in the rule the current Office procedure for review of an examiner's refusal to admit an amendment or Evidence by petition to the Director under Rule 1.181. Final Bd.R. 41.37(c)(2) further replaces instances of ''evidence'' with ''Evidence'' where appropriate to incorporate the definition of ''Evidence'' provided in final Bd.R. 41.30.

*Appeal Brief—Notice of Non-Compliance*

Bd.R. 41.37(d) is amended to add a heading and to provide that under the Office's new streamlined procedure for review of *ex parte* appeal briefs for

compliance with the rule, review of a determination of non-compliant appeal brief should be requested via a petition to the Chief Administrative Patent Judge under Bd.R. 41.3.

*Appeal Brief—Extensions of Time*

Bd.R. 41.37(e) is amended to add a heading.

*Examiner's Answer*

Bd.R. 41.39(a) is amended to add a heading and preamble.

Bd.R. 41.39(a)(1) is amended to provide that the examiner's answer, by default, incorporates all the grounds of rejection set forth in the Office action which is the basis for the appeal, including any modifications made via advisory action or pre-appeal brief conference decision, except for any grounds of rejection indicated by the examiner as withdrawn in the answer. Bd.R. 41.39(a)(1) is also amended to delete the requirement that the answer include an explanation of the invention claimed and of the grounds of rejection, since the Board will rely on appellant's specification and summary of claimed subject matter for an explanation of the invention claimed and will rely on the statement of the rejection(s) in the Office action from which the appeal is taken, as modified by advisory action or pre-appeal brief conference decision. In light of the streamlined review of appeal briefs for compliance with the rules, Bd.R. 41.39(a)(1) is further amended to delete the requirement for the primary examiner to make any determination that an appeal does not comply with the provisions of final Bd.R. 41.31 and 41.37.

Bd.R. 41.39(a)(2) is amended to provide that if a rejection set forth in the answer relies on any Evidence not relied on in the Office action from which the appeal is taken, then the rejection must be designated as a new ground of rejection, and any answer that contains such a new ground of rejection must be approved by the Director. The Director may choose to delegate this authority as appropriate. Bd.R. 41.39(a)(2), as amended, refers to ''Evidence'' as defined in final Bd.R. 41.30.

Bd.R. 41.39(b) is amended to add a heading.

Bd.R. 41.39(b)(1) is amended to replace instances of ''evidence'' with ''Evidence'' where appropriate to refer to ''Evidence'' as defined in final Bd.R. 41.30.

Bd.R. 41.39(b)(2) is amended to move the phrase ''each new ground of rejection'' to a different location in the sentence to increase the clarity of the sentence. Bd.R. 41.39(b)(2) is also amended to replace instances of ''evidence'' with ''Evidence'' where appropriate to refer to ''Evidence'' as defined in final Bd.R. 41.30. Bd.R. 41.39(b)(2) is further amended to replace the cross-reference to Bd.R. 41.37(c)(1)(vii) with a reference to final Bd.R. 41.37(c)(1)(iv) in light of the renumbering of paragraphs within final Bd.R. 41.37(c)(1).

Final Bd.R. 41.39(b)(1) and (b)(2) continue to provide appellants the option to reopen prosecution or maintain the appeal by filing a reply brief to respond to the new ground of rejection.

Bd.R. 41.39(c) is amended to add a heading.

Content requirements for the examiner's answer are not included in the rule, because the Office needs to retain flexibility to add content requirements as needed by revision of the MPEP. The Office plans to continue to require that the examiner's answer contain a grounds of rejection section that would set forth any rejections that have been withdrawn and any new grounds of rejection, and the answer would further be required to contain a response to the arguments section to include any response the examiner has to arguments raised in the appeal brief. *See* MPEP § 1207.02. The answer would no longer be required to restate the grounds of rejection being maintained. The Board would instead rely on the statement of the grounds of rejection in the Office action from which the appeal was taken (as modified by any subsequent advisory action or pre-appeal brief conference decision).

The following discussion provides guidance to appellants and examiners as to the Office's view of what constitutes a new ground of rejection. This discussion is for the limited ''purposes of the examiner's answer,'' as per final Bd.R. 41.39(a)(2). This discussion does not apply to final rejections under Rule 1.113. The reason for this distinction is that Rule 1.116 affords applicants the opportunity to submit rebuttal evidence after a final rejection but before or on the same date of filing a notice of appeal. An appellant's ability to introduce new evidence after the filing of an appeal is more limited under final Bd.R. 41.33(d) than it is prior to the appeal. Thus, applicants are able to present rebuttal evidence in response to a final rejection, while they are not permitted to do so in response to an examiner's answer on appeal, unless an answer is designated as containing a new ground of rejection.

If Evidence (such as a new prior art reference) is applied or cited for the first time in an examiner's answer, then final Bd.R. 41.39(a)(2) requires that the rejection be designated as a new ground of rejection. If the citation of a new prior art reference is necessary to support a rejection, it must be included in the statement of rejection, which would be considered to introduce a new ground of rejection. Even if the prior art reference is cited to support the rejection in a minor capacity, it should be positively included in the statement of rejection and be designated as a new ground of rejection. *In re Hoch,* 428 F.2d 1341, 1342 n.3 (CCPA 1970).

Relying on new Evidence, however, is not the only way to trigger a new ground of rejection in an examiner's answer. A position or rationale that changes the ''basic thrust of the rejection'' will give rise to a new ground of rejection. *In re Kronig,* 539 F.2d 1300, 1303 (CCPA 1976). However, the examiner need not use identical language in both the examiner's answer and the Office action from which the appeal is taken to avoid triggering a new ground of rejection. It is not a new ground of rejection, for example, if the examiner's answer responds to appellant's arguments using different language, or restates the reasoning of the rejection in a different way, so long as the ''basic thrust of the rejection'' is the same. *In re Kronig,* 539 F.2d at 1303; *see also In re Jung,* 637 F.3d 1356, 1364–65 (Fed. Cir. 2001) (additional explanation responding to arguments offered for the first time ''did not change the rejection'' and appellant had fair opportunity to respond); *In re Noznick,* 391 F.2d 946, 949 (CCPA 1968) (no new ground of rejection made when ''explaining to appellants why their arguments were ineffective to overcome the rejection made by the examiner''); *In re Krammes,* 314 F.2d 813, 817 (CCPA 1963) (''It is well established that mere difference in form of expression of the reasons for finding claims unpatentable or unobvious over the references does not amount to reliance on a different ground of rejection.'' (citations omitted)); *In re Cowles,* 156 F.2d 551, 1241 (CCPA 1946) (holding that the use of ''different language'' does not necessarily trigger a new ground of rejection).

The following examples are intended to provide guidance as to what constitutes a new ground of rejection in an examiner's answer. What constitutes a ''new ground of rejection'' is a highly fact-specific question. *See, e.g., Kronig,* 539 F.2d at 1303 (finding new ground entered based upon ''facts of this case'' and declining to find other cases controlling given ''the distinctive facts at bar''); *In re Ahlert,* 424 F.2d 1088, 1092 (CCPA 1970) (''[l]ooking at the facts of this case, we are constrained to hold'' that a new ground was entered).

If a situation arises that does not fall neatly within any of the following examples, it is recommended that the examiner identify the example below that is most analogous to the situation at hand, keeping in mind that ''the ultimate criterion of whether a rejection is considered 'new' * * * is whether appellants have had fair opportunity to react to the thrust of the rejection.'' *Kronig,* 539 F.2d at 1302.

*Factual Situations That Constitute a New Ground of Rejection*

1. *Changing the statutory basis of rejection from § 102 to § 103.* If the examiner's answer changes the statutory basis of the rejection from § 102 to § 103, then the rejection should be designated as a new ground of rejection. For example, in *In re Hughes,* 345 F.2d 184 (CCPA 1965), the Board affirmed an examiner's rejection under § 102 over a single reference. On appeal, the Solicitor argued that the Board's decision should be sustained under § 103 over that same reference. The court declined to sustain the rejection under § 103, holding that a change in the statutory basis of rejection would constitute a new ground of rejection, and observed that ''the issues arising under the two sections [§§ 102 and 103] may be vastly different, and may call for the production and introduction of quite different types of evidence.'' *Hughes,* 345 F.2d at 186–87.

2. *Changing the statutory basis of rejection from § 103 to § 102, based on a different teaching.* If the examiner's answer changes the statutory basis of the rejection from § 103 to § 102, and relies on a different portion of a reference which goes beyond the scope of the portion that was previously relied upon, then the rejection should be designated as a new ground of rejection. For example, in *In re Echerd,* 471 F.2d 632 (CCPA 1973), the examiner rejected the claims under § 103 over a combination of two references. The Board then changed the ground of rejection to § 102 over one of those references, relying on a different portion of that reference for some claim limitations, and asserted that the remaining claim limitations were inherently present in that reference. The court held that the Board's affirmance constituted a new ground of rejection. *Echerd,* 471 F.2d at 635 (''[A]ppellants should have been accorded an opportunity to present rebuttal evidence as to the new assumptions of inherent characteristics. * * *'' (citation omitted)).

3. *Citing new calculations in support of overlapping ranges.* If a claim reciting a range is rejected as anticipated or obvious based on prior art that falls within or overlaps with the claimed range (*see* MPEP §§ 2131.03 and 2144.05), and the rejection is based upon range values calculated for the first time in the examiner's answer, then the rejection should be designated as a new ground of rejection. For example, in *In re Kumar,* 418 F.3d 1361 (Fed. Cir. 2005), the examiner rejected the claims under § 103 based on overlapping ranges of particle sizes and size distributions. The Board affirmed the rejection, but included in its decision an appendix containing calculations to support the prima facie case of obviousness. The court held the Board's reliance upon those values to constitute a new ground of rejection, stating that ''the Board found facts not found by the examiner regarding the differences between the prior art and the claimed invention, which in fairness required an opportunity for response.'' *Kumar,* 418 F.3d at 1368 (citation omitted).

4. *Citing new structure in support of structural obviousness.* If, in support of an obviousness rejection based on close structural similarity (*see* MPEP § 2144.09), the examiner's answer relies on a different structure than the one on which the examiner previously relied, then the rejection should be designated as a new ground of rejection. For example, in *In re Wiechert,* 370 F.2d 927 (CCPA 1967), the examiner rejected claims to a chemical composition under § 103 based on the composition's structural similarity to a prior art compound disclosed in a reference. The Board affirmed the rejection under § 103 over that same reference, but did so based on a different compound than the one the examiner cited. The court held that the Board's decision constituted a new ground of rejection, stating, ''Under such circumstances, we conclude that when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference.'' *Wiechert,* 370 F.2d at 933.

5. *Pointing to a different portion of the claim to maintain a ''new matter'' rejection.* If, in support of a claim rejection under 35 U.S.C. 112, first paragraph, based on new matter (*see* MPEP § 2163.06), a different feature or aspect of the rejected claim is believed to constitute new matter, then the rejection should be designated as a new ground of rejection. For example, in *In re Waymouth,* 486 F.2d 1058 (CCPA 1973), the claims included the limitation ''said sodium iodide * * * present in amount of at least 0.17 mg./cc. of said arc tube volume.'' The examiner's rejection stated that the claimed ''sodium iodide'' constituted new matter because the specification was alleged only to disclose ''sodium.'' The Board affirmed the rejection, but did so on a ''wholly different basis,'' namely, that the specification failed to disclose the claimed ''0.17 mg./cc.'' volume limitation. *Waymouth,* 486 F.2d at 1060. The court held that the Board's rationale constituted a new ground of rejection, ''necessitating different responses by appellants.'' *Id.* at 1061.

*Factual Situations That Do Not Constitute a New Ground of Rejection*

1. *Citing a different portion of a reference to elaborate upon that which has been cited previously.* If the examiner's answer cites a different portion of an applied reference which goes no farther than, and merely elaborates upon, what is taught in the previously cited portion of that reference, then the rejection does not constitute a new ground of rejection. For example, in *In re DBC,* 545 F.3d 1373 (Fed. Cir. 2008), the examiner rejected the claims under § 103 over a combination of references, including the English translation of the abstract for a Japanese patent. The examiner cited the English abstract for two claim limitations: (1) Mangosteen rind, and (2) fruit or vegetable juice. The Board affirmed the rejection under § 103 over the same references, but instead of citing the abstract, the Board cited an Example on page 16 of the English translation of the Japanese reference, which was not before the examiner. *DBC,* 545 F.3d at 1381. Importantly, the Board cited the Example for the same two claim limitations taught in the abstract, and the Example merely elaborated upon the medicinal qualities of the mangosteen rind (which medicinal qualities were not claimed) and taught orange juice as the preferred fruit juice (while the claim merely recited fruit or vegetable juice). Hence, the Example merely provided a more specific disclosure of the same two generic limitations that were fully taught by the abstract. The court held that this did not constitute a new ground of rejection because ''the example in the translation goes no farther than, and merely elaborates upon, what is taught by the abstract.'' *DBC,* 545 F.3d at 1382 n.5.

2. *Changing the statutory basis of rejection from § 103 to § 102, but relying on the same teachings.* If the examiner's answer changes the statutory basis of the rejection from § 103 to § 102, and relies on the same teachings of the remaining reference to support the § 102 rejection, then the rejection does not

constitute a new ground of rejection. For example, in *In re May,* 574 F.2d 1082 (CCPA 1978), a claim directed to a genus of chemical compounds was rejected under § 103 over a combination of references. The primary reference disclosed a species that fell within the claimed genus. Both the examiner and the Board cited the species to reject the claim under § 103. The court affirmed the rejection, but did so under § 102, stating that ''lack of novelty is the epitome of obviousness.'' *May,* 574 F.2d at 1089 (citing *In re Pearson,* 494 F.2d 1399, 1402 (CCPA 1974)). Because the court relied on the same prior art species as both the examiner and Board, the court held that this did not constitute a new ground of rejection. *May,* 574 F.2d at 1089.

3. *Relying on fewer than all references in support of a § 103 rejection, but relying on the same teachings.* If the examiner's answer removes one or more references from the statement of rejection under § 103, and relies on the same teachings of the remaining references to support the § 103 rejection, then the rejection does not constitute a new ground of rejection. For example, in *In re Kronig,* 539 F.2d 1300, 1302 (CCPA 1976), the examiner rejected the claims under § 103 over four references. The Board affirmed the rejection under § 103, but limited its discussion to three of the references applied by the examiner. *Id.* The Board relied upon the references for the same teachings as did the examiner. The court held that this did not constitute a new ground of rejection. *Kronig,* 539 F.2d at 1303 (''Having compared the rationale of the rejection advanced by the examiner and the board on this record, we are convinced that the basic thrust of the rejection at the examiner and board level was the same.''). *See also In re Bush,* 296 F.2d 491, 495–96 (CCPA 1961) (Examiner rejected claims 28 and 29 under § 103 based upon ''Whitney in view of Harth;'' Board did not enter new ground of rejection by relying only on Whitney).

4. *Changing the order of references in the statement of rejection, but relying on the same teachings of those references.* If the examiner's answer changes the order of references in the statement of rejection under § 103, and relies on the same teachings of those references to support the § 103 rejection, then the rejection does not constitute a new ground of rejection. For example, in *In re Cowles,* 156 F.2d 551, 552 (CCPA 1946), the examiner rejected the claims under § 103 over ''Foret in view of either Preleuthner or Seyfried.'' The Board affirmed the rejection under § 103, but styled the statement of rejection as to some of the rejected claims as ''Seyfried in view of Foret,'' but relied on the same teachings of Seyfried and Foret on which the examiner relied. The court held that this did not constitute a new ground of rejection. *Cowles,* 156 F.2d at 554. *See also In re Krammes,* 314 F.2d 813, 816–17 (CCPA 1963) (holding that a different ''order of combining the references'' did not constitute a new ground of rejection because each reference was cited for the ''same teaching'' previously cited).

5. *Considering, in order to respond to applicant's arguments, other portions of a reference submitted by the applicant.* If an applicant submits a new reference to argue, for example, that the prior art ''teaches away'' from the claimed invention (*see* MPEP § 2145), and the examiner's answer points to portions of that same reference to counter the argument, then the rejection does not constitute a new ground of rejection. In *In re Hedges,* 783 F.2d 1038 (Fed. Cir. 1986), the claimed invention was directed to a process for sulfonating diphenyl sulfone at a temperature above 127° C. *Id.* at 1039. The examiner rejected the claims under § 103 over a single reference. The applicant submitted three additional references as evidence that the prior art teaches away from performing sulfonation above 127° C, citing portions of those references which taught lower temperature reactions. The Board affirmed the rejection, finding the applicant's evidence unpersuasive. On appeal, the Solicitor responded to the applicant's ''teaching away'' argument by pointing to other portions of those same references which, contrary to applicant's argument, disclosed reactions occurring above 127° C. The court held that this did not constitute a new ground of rejection because ''[t]he Solicitor has done no more than search the references of record for disclosures pertinent to the same arguments for which [applicant] cited the references.'' *Hedges,* 783 F.2d at 1039–40.

*Tolling of Time Period To File a Reply Brief*

Final Bd.R. 41.40 sets forth the exclusive procedure for an appellant to request review of the primary examiner's failure to designate a rejection as a new ground of rejection via a petition to the Director under Rule 1.181. This procedure should be used if an appellant feels an answer includes a new ground of rejection that has not been designated as such and wishes to reopen prosecution so that new amendments or evidence may be submitted in response to the rejection. However, if appellant wishes to submit only arguments, the filing of a petition under Rule 1.181 would not be necessary because appellant may submit the arguments in a reply brief.

Final Bd.R. 41.40(a) provides that any such petition under Rule 1.181 must be filed within two months from the entry of the examiner's answer and prior to the filing of a reply brief.

Final Bd.R. 41.40(b) provides that a decision granting such a Rule 1.181 petition requires appellants to file a reply under Rule 1.111 within two months from the date of the decision to reopen prosecution. If appellant fails to timely file a reply, then the appeal will be dismissed.

Final Bd.R. 41.40(c) provides that a decision refusing to grant such a Rule 1.181 petition allows appellants a two-month time period in which to file a single reply brief under final Bd.R. 41.41.

Final Bd.R. 41.40(d) provides that if a reply brief is filed prior to a decision on the Rule 1.181 petition, then the filing of the reply brief acts to withdraw the petition and maintain the appeal. Jurisdiction passes to the Board upon the filing of the reply brief, and the petition under Rule 1.181 will not be decided on the merits.

Final Bd.R. 41.40(e) provides that the time periods described in this section are not extendable under Rule 1.136(a) and appellant must seek any extensions of time under the provisions of Rules 1.136(b) and 1.550(c) for extensions of time to reply for patent applications and *ex parte* reexaminations, respectively.

Final Bd.R. 41.40 provides the proper manner for appellants to address a situation where an appellant believes that an examiner's answer contains an undesignated new ground of rejection. The rule does not create a new right of petition—appellants have always had the opportunity to file a petition under Rule 1.181 if an appellant felt that the examiner's answer contained a new ground of rejection not so designated. This final rule merely lays out the process to better enable appellants to address such concerns. The final rule also now tolls the time period for filing a reply brief, so appellants can avoid the cost of preparing and filing a reply brief prior to the petition being decided, and can avoid the cost altogether if the petition is granted and prosecution is reopened. Similarly, the tolling provision will spare examiners the burden of having to act on appellants' requests under Rule 1.136(b) for extension of the two-month time period for filing a reply brief while the Rule 1.181 petition is being decided.

*Reply Brief*

Bd.R. 41.41(a) is amended to add a heading and to clarify that appellants may file only one reply brief and that such a reply brief must be filed within the later of two months of either the examiner's answer or a decision refusing to grant a petition under Rule 1.181 to designate a new ground of rejection in an examiner's answer.

Bd.R. 41.41(b) is amended to add a heading and subsections, and to delete the provision that a reply brief which is not in compliance with the provisions of the remainder of final Bd.R. 41.41 will not be considered by the Board. Specifically, final Bd.R. 41.41(b)(1) is added, which prohibits a reply brief from including new or non-admitted amendments or Evidence, which is the same language as in Bd.R. 41.41(a)(2). Final Bd.R. 41.41(b) refers to ''Evidence'' as defined in final Bd.R. 41.30. Final Bd.R. 41.41(b)(2) is also added, which provides that any arguments which were not raised in the appeal brief or are not made in response to arguments raised in the answer will not be considered by the Board, absent a showing of good cause. The final rule allows new arguments in the reply brief that are responsive to arguments raised in the examiner's answer, including any designated new ground of rejection.

Bd.R. 41.41(c) is amended to add a heading.

*Examiner's Response to Reply Brief*

Bd.R. 41.43 is deleted.

*Oral Hearing*

Bd.R. 41.47 is amended by removing references to the supplemental examiner's answer in paragraphs (b) and (e)(1), as the final rule does not allow for supplemental examiner's answers. Bd.R. 41.47(b) is further amended to change the time period in which a request for oral hearing is due to take into account the potential for the time period for filing a reply brief to be tolled under final Bd.R. 41.40. Bd.R. 41.47(e)(1) is further amended to replace instances of ''evidence'' with ''Evidence'' to incorporate the definition provided in final Bd.R. 41.30.

*Decisions and Other Actions by the Board*

Bd.R. 41.50(a)(1) is amended by adding a heading.

Bd.R. 41.50(a)(2) is amended by allowing the examiner to write a ''substitute'' examiner's answer in response to a remand by the Board for further consideration of a rejection.

Bd.R. 41.50(a)(2)(i) and 41.50(a)(2)(ii) are amended by replacing instances of ''evidence'' with ''Evidence'' to incorporate the definition provided in final Bd.R. 41.30. Bd.R. 41.50(a)(2)(i) is further amended by replacing ''supplemental'' with ''substitute'' examiner's answer.

Bd.R. 41.50(b) is amended by adding a heading and is further amended to clarify the Board's authority to enter a new ground of rejection. Bd.R. 41.50(b)(1) is amended by incorporating the definitions of ''Record'' and ''Evidence'' provided in final Bd.R. 41.30, and by clarifying the language of the rule. Bd.R. 41.50(b)(2) is amended to incorporate the definition of ''Record'' as provided for in final Bd.R. 41.30.

Bd.R. 41.50(c) is amended by removing the Board's power to suggest in a decision how a claim may be amended to overcome a rejection and by adding new language to the rule explaining the procedure by which appellants can seek review of a panel's failure to designate a decision as containing a new ground of rejection. The final rule provides that review of decisions which appellants believe contain a new ground of rejection should be requested through a request for rehearing consistent with the provisions of final Bd.R. 41.52.

Bd.R. 41.50(d) is amended to add a heading, and to delete the ''non-extendable'' limitation on the response time period.

Bd.R. 41.50(e) is amended to add a heading.

Bd.R. 41.50(f) is amended to add a heading.

*Rehearing*

Bd.R. 41.52(a)(1) is amended to add cross-references to relevant sections of the rule and to clarify that arguments which are not raised and Evidence which was not previously relied upon are not permitted in the request for rehearing, except as provided in the remainder of final Bd.R. 41.52(a). Bd.R. 41.52(a)(1) is further amended to incorporate the definition of ''Evidence'' provided in final Bd.R. 41.30.

Bd.R. 41.52(a)(2) is amended to delete the requirement for appellants to make a showing of good cause to present new arguments based on a recent relevant decision of the Board or the Federal Circuit. It is the Office's position that a new argument based on a recent relevant decision would inherently make a showing of good cause.

Bd.R. 41.52(a)(3) is amended to change the word ''made'' to ''designated'' to clarify that new arguments are permitted in response to a new ground of rejection designated as such in the Board's opinion.

Final Bd.R. 41.52(a)(4) is added to make clear that new arguments are permitted in a request for rehearing for appellants seeking to have the Board designate its decision as containing a new ground of rejection that has not been so designated.

Thus, the final rule provides appellants with a mechanism to address Board decisions containing new grounds of rejection through a request for rehearing, whether or not designated as such in a Board decision. Final Bd.R. 41.52(a)(3) allows for new arguments in a request for rehearing responding to the merits of a new ground of rejection designated as such, and final Bd.R. 41.52(a)(4) allows for new arguments in a request for rehearing to argue that the Board's decision contains an undesignated new ground of rejection. If such a request for rehearing under final Bd.R. 41.52(a)(4) is granted, then the Board would modify its original decision to designate the decision as containing a new ground of rejection under final Bd.R. 41.50(b) and provide appellants with the option to either reopen prosecution under final Bd.R. 41.50(b)(1) or request rehearing on the merits of the designated new ground of rejection under final Bd.R. 41.50(b)(2).

The final Bd.R. 41.52(b) does not modify Bd.R. 41.52(b).

*Action following decision*

Bd.R. 41.54 is amended to specifically state that jurisdiction over an application or a patent under *ex parte* reexamination passes to the examiner after a decision on appeal is issued by the Board. This revision to the language incorporates the language of Rule 1.197(a), which is deleted from the final rule. By incorporating the language of Rule 1.197(a) into final Bd.R. 41.54, the rule for passing jurisdiction back to the examiner after decision by the Board is not substantively changed from the previous practice.

**Differences Between the Final Rule and the Proposed Rule**

Several changes have been made to the rule as proposed in the NPRM. Because some of these changes add briefing requirements to the appeal brief that the Office had proposed to remove in the NPRM, the estimate of the burden on applicants to produce the appeal brief has also changed. The Office previously estimated that the rules proposed in the NPRM would reduce an applicant's paperwork burden from 34 hours to 31 hours. The Office estimates that the Final Rule will reduce the paperwork burden from 34 hours to 32 hours.

**Response to Comments**

The Office published a notice of proposed rulemaking proposing changes to the rules of practice before the Board of Patent Appeals and Interferences in *ex parte* appeals. *See* Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals; Notice of proposed rulemaking, 75 FR 69828 (Nov. 15, 2010) (NPRM). The Office received comments from six intellectual property organizations, four corporations and foundations, three law firms, and 21 individuals in response to this notice. The Office's responses to the comments follow.

Eight entities submitted written comments solely to express the view that they are wholeheartedly in favor of the changes to the rules as proposed in the NPRM. In light of all of the comments received, the USPTO has decided not to adopt a few of the changes proposed in the NPRM and to adopt a few other proposed changes with slight clarification to the language used to make the rule clearer. On balance, however, the rule changes proposed in the NPRM are being adopted substantially as proposed.

*Bd.R. 41.12*

*Comment 1:* Two comments favored extending the list of preferred citations to include other sources, such as United States Patent Quarterly, LEXIS, and Pacer. Two other comments favored the proposed rule changes.

*Response:* The USPTO declines to adopt the suggestion to extend the list of preferred citations to other sources. This rule merely indicates to the public which citation sources are ''preferred'' by the Board but it does not require appellants to cite to any one particular source.

*Comment 2:* One comment suggested that paragraph (d) should be amended to make clear that appellants are not required to provide copies of the BPAI's own precedential decisions.

*Response:* A BPAI precedential decision is binding on the Board and is considered an ''authority of the Office'' and thus does not fall within the ambit of paragraph (d). As such, the rule does not require appellants to submit a copy of a BPAI precedential decision.

*Bd.R. 41.20*

*Comment 3:* While no change was proposed to this section of the rule, one comment was submitted suggesting that the USPTO should not charge fees for appeals that do not reach the BPAI for decision.

*Response:* The suggestion is beyond the scope of the NPRM and will not be adopted. The USPTO takes this opportunity to note that 35 U.S.C. 42(d) authorizes the USPTO to refund ''any fee paid by mistake or any amount paid in excess of that required.'' If an applicant chooses to file a notice of appeal and an appeal brief with the accompanying fees, and the case does not reach the Board for a decision, either through actions taken by the examiner or applicant, then the appeal fees have not been paid by mistake or in excess of that required, and the USPTO lacks statutory authority to refund these appeal fees.

*Bd.R. 41.30*

*Comment 4:* Two comments opposed the proposed definition of ''Record'' because it did not address file wrappers of older cases that are still maintained in paper format.

*Response:* The USPTO creates an Image File Wrapper for any appeal to the Board that does not yet have one. Further, the definition of ''Record'' in final Bd.R. 41.30 addresses a situation where the official file of the Office is other than an Image File Wrapper.

*Bd.R. 41.31*

*Comment 5:* One comment requested clarification of the term ''twice rejected'' as used in paragraph (a) of this section because MPEP § 1204 is allegedly narrower than the majority Board decision in *Ex Parte Lemoine,* 46 USPQ2d 1420 (BPAI 1994).

*Response:* This comment is beyond the scope of the NPRM. Bd.R. 41.31 rule uses the same ''twice rejected'' language. No change will be made to paragraph (a) as a result of this comment.

*Comment 6:* One comment was in favor of the proposed retention of the provision in paragraph (b) allowing a notice of appeal to be filed without a signature. Another comment suggested that paragraph (b) be revised to cite more specifically to Rule 1.33(b).

*Response:* The USPTO declines to make this change to the rule. Final Bd.R. 41.31(b) applies to *ex parte* appeals in both applications and reexamination proceedings. Rule 1.33(b) applies only to amendments and other papers filed in an application, while Rule 1.33(c) applies to amendments and other papers filed in a reexamination proceeding on behalf of the patent owner. As such, the USPTO will retain the rule as proposed with the more general reference to Rule 1.33 to encompass both types of appeals.

*Comment 7:* Three comments were in favor of the proposal in Bd.R. 41.31(c) that an appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by applicant's amendment, and two comments were opposed. One comment opposed to proposed Bd.R. 41.31(c) suggested that claims declared cancelled for purposes of the appeal be automatically reinstated if prosecution is reopened by the examiner.

*Response:* The USPTO declines to adopt the suggested change to the proposed rule. If an applicant chooses to cancel a claim to avoid appeal of that claim rejection, the claim remains cancelled. Nothing in this rule prohibits applicants from adding back these cancelled claims by amendment should prosecution be reopened.

*Comment 8:* Another comment opposed to Bd.R. 41.31(c) proposed that the USPTO allow appellants to appeal less than all of the claims, and that allowing the USPTO to cancel or deem claims cancelled or requiring cancellation as a quid pro quo for appeal is ultra vires.

*Response:* It has long been USPTO practice that an appellant must either appeal from the rejection of all the rejected claims or cancel those claims not being appealed. *See In re Benjamin,* 1903 Dec. Comm. Pat. 132, 134 (1903). Final Bd. R. 41.31(c) merely states that an appeal is presumed to be taken from the rejection of all rejected claims that have not been cancelled. Nothing in the rule would require applicants, as a quid pro quo for appeal, to cancel claims. Should an applicant desire to appeal less than all the rejected claims without actually cancelling the claims, applicant may simply say nothing as to the claims applicant does not wish to appeal and the Board may simply affirm the rejection of those claims.

*Comment 9:* One comment suggested that the proposed revision to Bd.R. 41.31(c) violates the Paperwork Reduction Act because the commenter claimed the Office had not stated the utility to be gained by presuming applicants are appealing all rejected claims. Additionally, the commenter suggested that a better solution would be to allow the appellant to appeal some claims and leave some claims rejected and pending.

*Response:* The NPRM explains that the change to Bd.R. 41.31(c) will save time and paperwork for the ''majority of appellants who seek review of all claims under rejection'' by eliminating the requirement that each claim on appeal be listed in the notice of appeal. *See* 75 FR 69828–01, 2010 WL 4568003, at *69831 (Dep't of Commerce Nov. 15, 2010). The NPRM further explains that the utility of this change is in ''avoid[ing] the unintended cancellation of claims by the Office due to an

appellant's mistake in the listing of the claims in either the notice of the appeal or in the appeal brief.'' *Id.* Furthermore, the Office rejects the commenter's suggestion of allowing some claims to remain pending. Allowing such a piecemeal approach to appeals would greatly decrease the efficiency of the patent prosecution process.

*Comment 10:* One comment requested clarification on the portion of Bd.R. 41.31(c) that states, ''Questions relating to matters not affecting the merits of the invention may be required to be settled before an appeal can be considered'' because it is not clear whether this sentence would apply to questions created by the examiner, the appellant or the Board, or by all three.

*Response:* This comment is beyond the scope of the NPRM. This language is in the 2004 version of Bd.R. 41.31(c), and the proposed rule making did not propose any changes to this portion of the rule.

*Comment 11:* One comment suggested adding a provision to Bd.R. 41.31(c) to address appeals filed while petitions under Rule 1.181 are pending, specifically that the Chief Judge be able to decide if the appeal can proceed without the petition being decided or a procedure for expediting the petition decisions where that decision is necessary prior to decision on appeal.

*Response:* This comment is beyond the scope of the NPRM. The language in the last sentence of paragraph (c) is in the 2004 version of Bd.R. 41.31(c), and the proposed rulemaking did not propose any changes to this portion of the rule.

*Bd.R. 41.33*

*Comment 12:* One comment requested clarification stating that the limitations in Bd.R. 41.37(c)(2) and Bd.R. 41.41(b)(1) to preclude entry of a ''new'' or ''non-admitted'' amendments would potentially bar submission of items otherwise permitted under Bd.R. 41.33.

*Response:* Final Bd.R. 41.37(c)(2) and final Bd.R. 41.41(b)(1) are intended to preclude reliance on new or non-admitted amendments that are not otherwise admitted by the examiner under final Bd.R. 41.33. If the examiner enters an amendment under final Bd.R. 41.33, appellant may rely on that amendment in the briefs. If the amendment is filed concurrently with a brief, and if it complies with final Bd.R. 41.33, then appellant may refer to the amendment in the brief even prior to the examiner rendering a decision on whether to admit the amendment. Should the examiner subsequently refuse to enter the amendment, then the Board will require appellant to file a substitute brief.

*Comment 13:* Four comments opposed the rule in Bd.R. 41.33(d) restricting affidavits or other evidence filed after the date of filing an appeal. One comment suggested allowing appellants, with the payment of an additional fee, to file rebuttal evidence with an appeal brief.

*Response:* In response to the comments opposed to any restrictions on the amendments and evidence that appellants can file after final and/or on or after the filing of a brief, the USPTO declines to make any additional changes to the rule. Final Bd.R. 41.33(d) is virtually identical to Bd.R. 41.33(d), the only changes being to incorporate the definition of Evidence from final Bd.R. 41.30. The USPTO rules provide appellants with mechanisms for introduction of new evidence and amendments through petitions to challenge the finality of a rejection, petitions to challenge whether an answer contains an undesignated new ground of rejection, and/or through request for continued examination (RCE) practice. The available mechanisms provide appellants with a full and fair opportunity to present amendments and/or evidence so that the examiner can first consider them prior to the case reaching the Board for review. The Board's main purpose is to review adverse decisions of examiners. The Board's review is not a continuation of the initial examination of a case. To ensure that the Board reviews a complete record that has been fully considered first by the examiner, the USPTO will maintain this rule as proposed, except to add back in a cross-reference to final Bd.R. 41.50(a)(2)(i) and to replace instances of ''evidence'' with ''Evidence'' so as to incorporate the definition provided in final Bd.R. 41.30.

*Comment 14:* One comment proposed that Bd.R. 41.33(d) be amended to allow appellants to reference encyclopedia or dictionary definitions in the brief because these are materials that may be judicially or officially noticed without being formally admitted into evidence.

*Response:* The USPTO agrees that dictionaries can be judicially noticed without being formally admitted into evidence and thus adopts a definition of ''Evidence'' in final Bd.R. 41.30 for this subpart that excludes dictionaries from this definition. This exclusion allows appellants to submit dictionaries for the first time in an appeal brief, or for the first time in a reply brief if the arguments pertaining thereto are responsive to an argument raised in the examiner's answer or if good cause is shown. This exclusion will likewise allow examiners to cite to a dictionary for the first time in the examiner's answer without such citation automatically resulting in a new ground of rejection under final Bd.R. 41.39(a)(2). The USPTO will determine based on controlling case law and the facts of each case whether citation to a dictionary in the examiner's answer or a Board decision constitutes a new ground of rejection. The USPTO notes that its rules are designed so that the scope of admissible evidence that can be submitted by the applicant narrows as the application progresses toward appeal. In particular, the scope of admissible evidence narrows after mailing of a final rejection, and then narrows further after applicant files a notice of appeal, and then narrows even further after appellant files an appeal brief. *Compare* 37 CFR 1.116(e), 41.33(d)(1), and 41.33(d)(2). To ensure that the USPTO is consistent in its treatment of dictionaries and is not more restrictive regarding admission of dictionaries in after-final practice than on appeal under final Bd.R. 41.33(d), the USPTO will not treat dictionaries as ''evidence'' for purposes of Rule 1.116(e). However, the Office encourages applicants and examiners to cite dictionaries early in the prosecution to aid in narrowing, and possibly resolving, issues before the appeal stage.

*Bd.R. 41.35*

*Comment 15:* One comment suggested that the Board take jurisdiction earlier than proposed in Bd.R. 41.35(a), *i.e.,* at the time of filing of the notice of appeal.

*Response:* The USPTO declines to adopt this suggestion. Since examiners may choose to reopen prosecution or allow applications after the filing of a notice of appeal, changing the Board's jurisdiction to the point at which a notice of appeal is filed would foreclose the examiner's options and could result in applicants unnecessarily going through a costly and lengthy appeal process.

*Comment 16:* Two comments suggested that the Board take jurisdiction later, *i.e.,* after the examiner has had an opportunity to consider the reply brief, to allow for the instance where the examiner would find some or all of the claims patentable in light of the reply brief.

*Response:* USPTO data for the past ten years (FY 2001–FY 2010) shows that examiners allow applications in approximately 1% of all appeals and reopen prosecution in approximately 1% of all appeals after the filing of a reply brief. It is most often the case that once the examiner has held an appeal conference on the case and prepared an

examiner's answer, the examiner simply acknowledges and enters the reply brief and the appeal proceeds to the Board for review and decision. Meanwhile, USPTO data shows over the same time period that in those cases where the examiner simply acknowledged and entered the reply brief, the average pendency from the filing of a reply brief to the time the examiner acknowledged and entered the reply brief was 55 days. As such, the advantage in shorter pendency received by all appellants from the Board taking jurisdiction upon filing a reply brief—at which point, the examiner has held an appeal conference on the case and prepared an examiner's answer—outweighs, in the view of the USPTO, the advantage gained in those rare instances where an appeal may become unnecessary after filing of the reply brief. For these reasons, the USPTO will maintain the language of Bd.R. 41.35(a) as proposed.

*Comment 17:* Three comments were in favor of Bd.R. 41.35(a) as proposed.

*Response:* The USPTO adopts the proposed changes to Bd.R. 41.35(a).

*Comment 18:* One comment suggested that the USPTO adopt a default assumption for Bd.R. 41.35(b)(5) that appellant wants to proceed on appeal for other appealed claims and abandon claims subject to an action under Bd.R. 41.39 or 41.50 requiring response, akin to the approach taken when some claims are not dealt with in the appeal brief context.

*Response:* Under final Bd.R. 41.39(b), 41.50(a)(2) and 41.50(b), if appellant does not file a paper in response to a new ground of rejection or in response to a substitute examiner's answer prepared in response to a remand, the Board will dismiss the appeal ''as to the claims subject to the new ground of rejection'' or ''as to the claims subject to the rejection for which the Board has remanded the proceeding.'' If there are remaining claims not subject to the new ground of rejection or remand, then the appeal will proceed as to those remaining claims. The Board's jurisdiction under final Bd.R. 41.35(b)(5) would end only if all of the claims on appeal require action under final Bd.R. 41.39(b), 41.50(a)(2), or 41.50(b) and the appellant fails to take such required action, in which case the Board would enter an order of dismissal for the entire appeal. As to final Bd.R. 41.50(d), if an appellant fails to respond to the Board's request for briefing and information, the Board is entitled, at its discretion, to construe appellant's failure to respond as an indication that appellant no longer wishes to pursue the appeal, in which case the Board may enter an order dismissing the appeal.

*Comment 19:* One comment opposed Bd.R. 41.35(c) because, though the proposed rule removed the ability of the Board to remand appeals, as the Director can delegate the authority to remand, this rule would not remedy the problem created by remands, *i.e.,* that examiners can unduly draw out prosecution and not do a complete examination the first time around. The comment proposed that remands take place only at the appellant's request.

*Response:* The rule provides for the Director to sua sponte order a proceeding remanded to the examiner prior to entry of a decision on the appeal by the Board. The USPTO declines to adopt the suggestion to change the rule to strip this power from the Director.

*Comment 20:* One comment opposed the proposed changes to Bd.R. 41.35(d) because it would prevent consideration by the examiner of newly discovered evidence that is more pertinent than the art used in the rejection on appeal.

*Response:* If an appeal needs to be remanded for consideration of Information Disclosure Statements, the remand may result in lengthy delays in the appeal process and ultimately result in no change to the rejections that eventually reach the Board on appeal. As such, the USPTO will maintain the language of proposed Bd.R. 41.35(d) in this final rule.

*Comment 21:* One comment stated, with respect to proposed Bd.R. 41.35(d), that petitions filed while the Board possesses jurisdiction are likely to be untimely. The comment requested reconsideration of the two-month deadline for filing petitions.

*Response:* This suggestion is outside the scope of the NPRM, and the USPTO declines to adopt any rule changes regarding the deadline for filing petitions.

*Comment 22:* One comment suggested that the USPTO adopt a ''restatement'' clarifying what constitutes appealable subject matter to better enable the examining corps to address procedural issues.

*Response:* The USPTO will take this restatement into account when revising the MPEP in accordance with the final rule.

*Comment 23:* Another comment was in favor of the proposed changes to Bd.R. 41.35(d).

*Response:* The USPTO adopts proposed Bd.R. 41.35(d) as part of this final rule.

*Bd.R. 41.37*

*Comment 24:* Two comments opposed exempting pro se appellants from providing a statement of the last entered amendment under proposed Bd.R. 41.37(c)(1)(iv).

*Response:* The USPTO agrees with the comments suggesting requiring pro se appellants to provide the same information as other appellants regarding the claims on appeal. For reasons discussed below, the USPTO has decided to maintain the requirement for a claims appendix in lieu of the statement of last entered amendment. As such, the final rule requires all appellants, including pro se appellants, to provide a claims appendix.

*Comment 25:* One comment requested clarification as to whether pro se appellants must comply with all the requirements, but only substantially as to some, or whether the pro se appellant does not need to comply with all the requirements and only substantially as to the identified paragraphs.

*Response:* Final Bd.R. 41.37(c) requires pro se appellants to substantially comply with only the requirements in the identified subparagraphs, and pro se appellants are not required to comply with the requirements in the remaining subparagraphs of final Bd.R. 41.37(c).

*Comment 26:* Two comments favored the default assumption provided for in Bd.R. 41.37(c)(1)(i), and one comment suggested that absent a statement to the contrary, the Board should assume that the real party in interest consists of one or more of the inventors of the application and/or the assignee of the application as recorded at the USPTO.

*Response:* The USPTO declines to adopt this suggested change. The default provision is to address the situation in which the inventor(s) is the real party in interest. In such an instance, the Board will not hold a brief non-compliant if the statement of real party in interest is omitted. In the past, appellants mistakenly thought they could omit this portion of the brief if the named inventor(s) was the real party in interest. This led to briefs being held to be non-compliant based on a technicality. The default provision gives the USPTO the flexibility to assume that the inventor(s) are the real party in interest and avoid having to hold a brief non-compliant.

*Comment 27:* One comment was in favor of Bd.R. 41.37(c)(1)(ii) as proposed and another comment suggested we employ the phrase ''controlled by'' instead of ''owned'' and ''real party in interest'' instead of ''appellant or assignee'' as the real party in interest may be in a better position to know of related appealed cases.

*Response:* While under certain circumstances, an entity other than the appellant, appellant's legal representative, or assignee may be in a

better position to know of related cases, the USPTO declines to adopt the suggested change, which would expand the obligations to report related cases beyond this enumerated group.

*Comment 28:* Five comments were in favor of deleting the statement of the status of claims from the 2004 version of Bd.R. 41.37(c)(1)(iii) and no comments were received opposed to this proposed change. One comment in favor of the proposed change suggested that appellants should be allowed to cancel a claim in the brief itself, thereby saving the cost of filing a separate document formally cancelling the claim.

*Response:* The USPTO declines to adopt this suggested change. The USPTO requires that claim amendments be filed in a separate Amendment under final Bd.R. 41.33, so that they are separately considered and separately entered or refused entry as appropriate by the examiner. Under the new streamlined procedure for review of appeal briefs, the Board now reviews the appeal brief for entry into the Record, but the examiner continues to review Amendments under final Bd.R. 41.33 for entry into the Record.

*Comment 29:* One comment opposed proposed Bd.R. 41.37(c)(1)(iv), another comment suggested a change to the proposed rule to make clear that the statement should include the date of filing of the last entered amendment of the claims, as opposed to amendments to the specification, and another comment requested reconsideration of the proposed rule because in reissue and reexamination proceedings the full set of claims is not reproduced in amendments and thus in these instances the latest entered amendments may not reflect all the pending claims on appeal.

*Response:* The USPTO agrees with the last comment, and has decided to delete the requirement in proposed Bd.R. 41.37(c)(1)(iv) requiring a statement of last entered amendment and to delete the requirement in Bd.R. 41.37(c)(1)(iv) for a statement of the status of amendments. *Compare* 37 CFR 1.121 (requiring all claims ever presented), with 37 CFR 1.173 (reissues) and 37 CFR 1.530 (*ex parte* reexaminations) (requiring only claims being changed/added). As discussed in further detail below, the USPTO will maintain the requirement in Bd.R. 41.37(c)(1)(viii) (renumbered as final Bd.R. 41.37(c)(1)(v)) to provide a claims appendix.

*Comment 30:* Five comments were opposed to the proposed changes in Bd.R. 41.37(c)(1)(v), which required a summary of the claimed subject matter to include annotations for each claim limitation ''in dispute.'' The comments were concerned that the phrase ''in dispute'' was vague and unclear. Some of the comments suggested eliminating the summary of the claimed subject matter requirement entirely, other comments suggested limiting the requirement to only those appeals where the examiner raised a rejection under 35 U.S.C. 112, while other comments suggested amending the proposed rule to require annotations for each claim limitation. Another comment was concerned that annotating only those claim elements deemed to be ''in dispute'' would amount to an implied waiver or admission regarding those claim limitations not annotated. Another comment requested clarification of the goal of this briefing requirement.

*Response:* In light of the many comments received that expressed concern with determining which claim limitations are ''in dispute'' and expressed further concern with implied waiver for those limitations not annotated, the USPTO has decided not to amend this portion of the rule relating to the summary of claim subject matter to limit the summary to only those claims ''in dispute.'' Rather, the USPTO maintains the language of the 2004 rule, which requires a concise explanation of the subject matter defined in each of the independent claims. In light of the change to Bd.R. 41.35, the USPTO retains the proposed change requiring the summary for ''each of the rejected independent claims'', whereas the 2004 rule requires the summary for each of the independent claims ''involved in the appeal.'' The USPTO further retains the proposed changes that clarify that citation to the specification should be to the specification ''in the Record'' and not to the patent application publication. The USPTO further retains the proposed changes that permit appellant to refer to the specification by page and line number or ''by paragraph number.'' As to the comment requesting clarification about the goal of this section of the brief, the goal is to familiarize the judges with the claimed subject matter. This summary is helpful to the Board to work through cases as efficiently and expeditiously as possible. It helps to orient the judges so as to quickly and efficiently focus on the determinative aspects of the claims and the corresponding disclosure in the specification.

*Comment 31:* One comment suggested amending the language of proposed Bd.R. 41.37(c)(1)(v) to clarify whether annotation of separately argued dependent claims is required, as the language in the 2004 rule could be read as requiring annotation of dependent claims only if they are both argued separately and contain means plus function language.

*Response:* The final rule requires a concise explanation of the subject matter of separately argued dependent claims only if such claims include a means plus function or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph. However, the rule does not prohibit an appellant from providing a summary of claimed subject matter for all dependent claims argued separately, and the USPTO considers it a best practice for appellants to provide a summary of claimed subject matter for all dependent claims argued separately.

*Comment 32:* One comment opposed adoption of a single format of the summary in proposed Bd.R. 41.37(c)(1)(v) as being too rigid and suggested that the drafter of the appeal brief should be allowed to use whatever format they deem to be the most informative. The comment also requested the BPAI to provide examples of confusing and uninformative formats, rather than a single compliant format.

*Response:* The USPTO has decided to maintain the 2004 rule in substantial part, which does not require a single format for compliance. The rule does require, however, that regardless of the format provided by appellants, the summary of claimed subject matter must ''refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters.'' The Board will find briefs to be non-compliant if the summary of the claimed subject matter does not include references to the specification by page and line number or by paragraph number, and references to drawings, if any, by reference characters. The Board will post examples on its Web page of both compliant and non-compliant summaries.

*Comment 33:* One comment stated that the language in proposed Bd.R. 41.37(c)(1)(v) requiring the summary to be ''sufficient to allow the Board to understand the claim'' is vague.

*Response:* The USPTO has decided to maintain the 2004 rule in substantial part. As such, this language is not incorporated in the final rule (renumbered as final Bd.R. 41.37(c)(1)(iii)).

*Comment 34:* One comment opposed the proposed Bd.R. 41.37(c)(1)(v) because it removed the requirement for appellants to identify the structure for all means plus function elements of the independent claims and separately argued dependent claims.

*Response:* The USPTO has decided to maintain the 2004 rule in substantial part. The final rule requires: ''For each rejected independent claim, and for each dependent claim argued separately under the provisions of paragraph (c)(1)(iv) of this section, if the claim contains a means plus function or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph, then the concise explanation must identify the structure, material, or acts described in the specification in the Record as corresponding to each claimed function with reference to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters.''

*Comment 35:* Four comments were in favor of the proposed change that eliminates the statement of the grounds of rejection in Bd.R. 41.37(c)(1)(vi), and the USPTO received no comments opposed to this proposed change.

*Response:* The USPTO adopts the elimination of the requirement as set forth in Bd.R. 41.37(c)(1)(vi) as proposed.

*Comment 36:* Two comments suggested that proposed Bd.R. 41.37(c)(1)(vii) be amended to prohibit appellants from raising arguments in the appeal brief that have not been raised previously in prosecution.

*Response:* The USPTO declines to adopt a rule prohibiting appellants from raising arguments in the appeal brief for the first time. In the indefinitely delayed 2008 final rule, the USPTO would have limited appellant's ability to raise new arguments in the appeal brief based on whether the argument had been raised before the examiner. *See* 73 FR 32943 (Jun. 10, 2008). Numerous comments were received in opposition to this proposed change. Keeping in mind the comments received in the prior rule making activity, the USPTO declines to set out a rule that limits appellants from raising arguments in the appeal brief for the first time.

*Comment 37:* One comment requested further clarification of the proposed Bd.R. 41.37(c)(1)(vii) as it relates to waiver. Specifically, the comment requested the USPTO clarify on what basis the Board will review the examiner's determination of patentability and explain the basis for that standard of review based on statutory authority and judicial precedent. The comment suggested that the Board should act as a fact finder, independently judge the examiner's findings, and conduct an independent review of the entire record, without presuming any part of the examiner's position to be correct. The comment suggested that the Board should review the statement of rejection in the office action from which the appeal is taken and determine whether that establishes a prima facie case of unpatentability, and, only in the instance where the Board determines that a prima facie case has been established would the Board proceed to review the appeal brief and the answer. Another comment suggested amending proposed subparagraph (c)(1)(vii) to provide parity so that any arguments presented by an appellant and not addressed by the examiner in the answer will be treated as waived by the Board.

*Response:* The USPTO reiterates its statements on waiver provided in the NPRM. The Board may treat as waived, for purposes of the present appeal, any arguments not raised by appellant. *See Hyatt* v. *Dudas,* 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (the Board may treat arguments appellant failed to make for a given ground of rejection as waived); *In re Watts,* 354 F.3d 1362, 1368 (Fed. Cir. 2004) (declining to consider the appellant's new argument regarding the scope of a prior art patent when that argument was not raised before the Board); *In re Schreiber,* 128 F.3d 1473, 1479 (Fed. Cir. 1997) (declining to consider whether prior art cited in an obviousness rejection was non-analogous art when that argument was not raised before the Board). *See also Ex parte Frye,* 94 USPQ2d 1072 (BPAI 2010). Final Bd.R. 41.37(c)(1)(iv) permits the Board to refuse to consider arguments not raised in the appeal brief, except as provided in final Bd.R. 41.41, 41.47, and 41.52. This language in the final rule is substantially the same as the language of the 2004 version of Bd.R. 41.37(c)(1)(vii), which states that ''[a]ny arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown.'' Any additional discussion of ''waiver'' as well as ''clarification'' of how the Board will review appeals is outside the scope of this rule making. Issues of waiver and how the Board will review appeals is uniquely case-specific and thus best left to discussion in future Board decisions as warranted. *See Ex parte Frye,* 94 USPQ2d 1072 (BPAI 2010) and *In re Jung,* 637 F.3d 1356 (Fed. Cir. 2011) for a general discussion of how the Board conducts its review. As to the comment suggesting that the Board review the statement of the rejection in the Office action from which the appeal is taken and determine whether that establishes a prima facie case of unpatentability, and only in the instance where the Board determines that a prima facie case has been established would the Board proceed to review the appeal brief and the answer, the USPTO declines to adopt this suggestion. The Board is a tribunal of appeal, where the appellant is responsible for pointing out the alleged error in the examiner's decision on appeal. *See Ex parte Frye,* 94 USPQ2d at 1075 (''If an appellant fails to present arguments on a particular issue—or, more broadly, on a particular rejection—the Board will not, as a general matter, unilaterally review those uncontested aspects of the rejection'' (citations omitted)); *Jung,* 637 F.3d at 1365–66. The Board's role is not to reexamine the application. At the time of filing the notice of appeal, an appellant can request a panel review by experienced examiners using the pre-appeal brief conference program. The appellant can also challenge specific aspects of the prima facie case and merits of the rejection by argument and evidence in the appeal brief. *See generally In re Jung,* 637 F.3d 1356 (Fed. Cir. 2011) (discussing nature of challenging rejections during Board appeals).

*Comment 38:* One comment questioned whether the Office was shifting the burden of proof of patentability to the applicants by requiring an applicant to plead all grounds for appeal in the appeal brief and considering any grounds that were not pled to be waived, and whether such a rule was substantive and thus outside the Office's rule making authority.

*Response:* The Office is not shifting any burden of proof. The burden of proof of unpatentability remains on the Office. The Office is merely clarifying an appellant's responsibility to point out what it is that the appellant wants the Board to review and what the examiner's error is believed to be. *See In re Jung,* 637 F.3d 1356, 1356–66 (Fed. Cir. 2011). This requirement merely governs the manner in which appellants present their viewpoints to the agency; it does not foreclose effective opportunity to make one's case on the merits. *See JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 326 (DC Cir. 1994) (stating that a ''critical feature'' of a procedural rule ''is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'').

*Comment 39:* Four comments were in favor of elimination of the claims appendix from Bd.R. 41.37(c)(1)(viii) because it would decrease the burden on appellants in drafting briefs. Three comments opposed elimination of the

claims appendix because it adds a burden to the public and the Board to search through the Image File Wrapper for the last entered amendment, because Briefs should be reasonably self-contained, and because in reissues and reexaminations the last entered amendment may not include a complete listing of the claims on appeal.

*Response:* In order to ensure that the examiner and appellants are presenting arguments as to the same set of claims on appeal, and in light of the comments raised regarding reissues and reexaminations, the USPTO has reconsidered the proposed deletion of the claims appendix and will instead maintain the requirement for appellants to include a claims appendix in the appeal brief (renumbered as final Bd.R. 41.37(c)(1)(v)).

*Comment 40:* Three comments were in favor of elimination of the evidence and related proceeding appendices from Bd.R. 41.37(c)(1). One comment proposed that the rule regarding the evidence appendix should clarify that it is appropriate to include materials that are not readily available to the Board including dictionary definitions, encyclopedias, unreported decisions, and administrative materials.

*Response:* The USPTO declines to add back the requirement for an evidence appendix simply to clarify what evidence is appropriate to include in such an appendix. The USPTO notes that elimination of this briefing requirement does not prohibit appellants from including an evidence appendix, and that the USPTO views inclusion of an evidence appendix, where warranted, as a best practice. However, the USPTO will determine on a case-by-case basis whether evidence referred to in and/or submitted with a brief should be considered under final Bd.R. 41.33. As discussed previously, the USPTO has adopted a definition of ''Evidence'' that excludes dictionaries, thus allowing appellants to refer to dictionary definitions in the appeal brief.

*Comment 41:* One comment requested clarification as to the prohibition in Bd.R. 41.37(c)(2) against including ''new'' or ''non-admitted'' amendments, affidavits or other evidence in briefs, because as written it could be construed to bar the submission of items otherwise permitted under Bd.R. 41.33.

*Response:* This comment is addressed above in the response to Comment 12.

*Comment 42:* One comment questioned why the proposed rules did not incorporate in Bd.R. 41.37(d) the current streamlined review of briefs for compliance with the rules by the Chief Judge or his designee.

*Response:* The USPTO chose not to codify the new streamlined procedure since this procedure relates to an internal management practice. Such practices are not typically codified in rules so as to provide the Office with the flexibility to make changes to the streamlined procedures should the need arise.

*Comment 43:* One comment suggested that the penalty for a non-compliant appeal brief in Bd.R. 41.37(d) should be that the non-compliant portion of the brief not be considered for purposes of the appeal. The comment suggested that the ''two strikes'' rule is harsh and capricious for something that may be a de minimus error, and that this type of response is not a default under the Federal Rules of Appellate Procedure.

*Response:* The USPTO declines to adopt the suggested change. The penalty for failure to overcome the reasons for non-compliance, as set forth in final Bd.R. 41.37(d), is the same penalty provided for in the 2004 version of Bd.R. 41.37(d). Further, the rule as proposed clarifies that appellants can petition the Chief Administrative Patent Judge if they feel their brief has been found to be non-compliant in error.

*Bd.R. 41.39*

*Comment 44:* One comment suggested defining or deleting the use of ''primary examiner'' in Bd.R. 41.39(a) and in Bd.R. 41.39(a)(2), (b)(1), and (b)(2), because this term is not defined in the CFR or the MPEP.

*Response:* The suggestion is beyond the scope of the NPRM and will not be adopted. The term ''primary examiner'' is used in 35 U.S.C. 134, the 2004 version of Bd.R. 41.39 and previous versions of the rule (*e.g.,* Rule 1.193 (1959)). The USPTO is using ''primary examiner'' in this paragraph to have the same meaning as used in 35 U.S.C. 134.

*Comment 45:* One comment opposed the removal in Bd.R. 41.39(a)(1) of the requirement for the examiner to present an integrated statement of the grounds of rejection, because it would place an undue burden on appellant and would discourage the examiner from being consistent.

*Response:* By not requiring examiners to restate the grounds of rejection in the answer, this rule will remove the possibility of any inconsistencies between the articulation of the grounds of rejection as stated in the Office action from which the appeal is taken and the articulation of the grounds of rejection in the answer, and will save appellants and the Board the time of having to compare the grounds of rejection in each document to ensure that they are the same. Under the final rule, the examiner will provide only a response to arguments raised in the appeal brief and/or a new ground of rejection, designated as such. The caveat in final Bd.R. 41.39(a)(1), which allows for modification of the grounds of rejection in an advisory action or pre-appeal brief conference decision, was deemed necessary because often appellants raise new arguments after the Office action from which the appeal is taken, *i.e.,* in a reply after final rejection or in a pre-appeal brief conference request, and any modification to the rejections made by the examiner, such as the withdrawal of a ground of rejection, should be taken into account in the grounds of rejection on appeal. Therefore, the examiner cannot reinstate a withdrawn rejection in the examiner's answer without designating it as a new ground of rejection.

*Comment 46:* One comment opposed the portion of the proposed Bd.R. 41.39(a)(2) that allows modification of the grounds of rejection in an advisory action or pre-appeal brief conference decision.

*Response:* The USPTO incorporates by reference its response to comment 45 provided *supra.*

*Comment 47:* Two comments favored proposed Bd.R. 41.39(a)(2) because the proposed rule, along with the examples provided in the discussion portion of the notice of proposed rule making, clarify when a new ground of rejection is made in an examiner's answer. Another comment opposed this proposed rule because it would increase burdens to the USPTO and permit delays in prosecution by appellants. This comment suggested that it would be better to address the issue of new evidence by not allowing appellants to make arguments in the briefs that were not presented during prosecution, or, by allowing examiners ''by default'' to introduce new evidence in the answer.

*Response:* The USPTO declines to adopt a rule prohibiting appellants from raising arguments in the appeal brief for the first time. In the indefinitely delayed 2008 final rule, the USPTO would have limited appellant's ability to raise new arguments in the appeal brief based on whether the argument had been raised before the examiner. *See* 73 FR 32943 (Jun. 10, 2008). Numerous comments were received in opposition to this proposed change. Keeping in mind the comments received in the prior rule making activity, the USPTO declines to set out a rule that limits appellants from raising arguments in the appeal brief for the first time.

*Comment 48:* One comment favored the requirement in Bd.R. 41.39(a)(2) for Director approval of answers containing

new grounds of rejection, but suggested that the rule should include a standard for the approval to include a substantive review of the pertinence of the newly cited prior art.

*Response:* The USPTO declines to codify a specific standard to be used by the Director to approve a new ground of rejection. The question of whether to approve an answer that contains a new ground of rejection is case-specific and, as such, is not amenable to a single standard. The USPTO notes that the text of Bd.R. 41.39(a)(2) as contained in this Final Rule reflects a minor modification from the version in the NPRM. The revision was made to clarify that the rule requires that the examiner obtain the Director's approval of an answer containing a new ground of rejection, and that the Director is not required to provide such approval.

*Comment 49:* One comment requested clarification of ''the references in this rule to modification of a rejection by an advisory action'', the concern being that the ''continuation'' portion of the advisory action may be used to substantially modify the rejection, and could raise the issue of whether the examiner has entered a new ground of rejection in the advisory action even before the filing of a notice of appeal. The comment stated that it would be especially important to have this language clear because Bd.R. 41.39(a)(1) would not require the examiner to restate the grounds of rejection—which could lead to confusion. The comment suggested that the rule state that the reference to a modification of a rejection in an advisory action would be only with regard to the status of the pending rejections or which claims are subject to a pending rejection, and that modification beyond that should not be encompassed by this rule, but should be achieved through reopening prosecution.

*Response:* The USPTO declines to modify the rule to specifically limit the content of an advisory action because it is impossible for the USPTO to foresee every situation that may arise during prosecution, and certain statements may be necessary in an advisory action to make the Record clear on appeal in light of actions, statements, or amendments made by appellants in an after-final amendment. To address the concern regarding new grounds of rejection, appellants who feel that an advisory action contains a new ground of rejection have the right to petition under Rule 1.181 for supervisory review of the examiner's action to seek to have prosecution reopened. See also the response to comment 45 provided *supra.*

*Comment 50:* One comment requested clarification of the term ''new evidence'' as used in Bd.R. 41.39(a)(2) and asked whether new dictionary definitions first used in an answer are included in the term ''new evidence.''

*Response:* The USPTO has added a definition of ''Evidence'' in final Bd.R. 41.30 to clarify that ''Evidence'' in this subpart does not include dictionaries. As such, the issue of whether citation to a dictionary for the first time in an answer or in a Board decision constitutes a new ground of rejection will be determined based on controlling case law and the specific facts of each case.

*Comment 51:* One comment opposed allowing new grounds of rejection in an answer because it creates a ''quagmire'' and allows the examiner not to be diligent in conducting prosecution. The comment suggested limiting new grounds of rejection to prior art references that first became publicly available after the date of the Office action from which the appeal is taken.

*Response:* The USPTO declines to adopt this suggestion. There are many reasons why an examiner might make a new ground of rejection based on prior art that was available at the time of the initial prosecution, including: Amendments made to the claims by appellants, challenges to official notice, *etc.* Further, the integrity of the patent system depends upon the examiner having the ability to rely on the best prior art of which he/she is aware. *See BlackLight Power, Inc.* v. *Rogan,* 295 F.3d 1269, 1273, 1274 (Fed. Cir. 2002) (''The PTO's responsibility for issuing sound and reliable patents is critical to the nation'' and ''[t]he object and policy of the patent law require issuance of valid patents''); *In re Alappat,* 33 F.3d 1526, 1535 (Fed. Cir. 1994) (en banc) (''The Commissioner has an obligation to refuse to grant a patent if he believes that doing so would be contrary to law.''); *see also In re Gould,* 673 F.2d 1385, 1386 (CCPA 1982). For these reasons, the USPTO declines to limit the examiner's ability to enter new grounds of rejection as suggested. The final rule provides appellants with adequate safeguards by allowing appellants to choose either to proceed with the appeal or reopen prosecution in response to a new ground of rejection raised in the answer.

*Comment 52:* One comment opposed Bd.R. 41.39(a)(2) to the extent it does not provide a mechanism for appellants to gain relief from new ground of rejection entered in an advisory action.

*Response:* Just as in the case where a final Office action contains an undesignated new ground of rejection, appellants who feel that an advisory action contains a new ground of rejection have the right to petition under Rule 1.181 for supervisory review of the examiner's action to seek to have prosecution reopened.

*Comment 53:* One comment suggested that examiners should not get a count for new grounds of rejection issued in an examiner's answer due to the examiner's own error. Additionally, the comment suggested that new grounds of rejection in an answer should trigger a reopening of prosecution by default.

*Response:* The USPTO declines to adopt these suggested changes. As to the suggestion not to award an examiner a count for an answer containing a new ground of rejection, this is a matter of internal management within the agency and is outside the scope of the proposed rules. As to the suggestion that a new ground of rejection should trigger reopening of prosecution by default, the USPTO's view is that it is more advantageous to appellants to give them the flexibility to choose either to proceed with an appeal or to reopen prosecution, depending on the circumstances of their particular case. The USPTO declines to adopt a default rule that would limit appellants' options in this situation.

*Comment 54:* One comment favored allowing new grounds of rejection as a ''necessary evil'' in advisory actions, decisions on pre-appeal conferences, answers and BPAI decisions. The comment suggested that appellants should always have the opportunity to respond to a new ground of rejection, regardless of when the new ground of rejection is entered in the prosecution history because the new grounds of rejection are most often a result of examiner error in prosecution; specifically violations of Chapter 2100 of the MPEP. The comment recommended that the USPTO enforce Chapter 2100 of the MPEP more thoroughly.

*Response:* While the Office does not agree with the comment that new grounds of rejection are most often a result of examiner error in prosecution, the Office will take the comments into consideration when revising the MPEP in accordance with the final rule and in providing guidance to the examining corps in Chapter 1200 of the MPEP. The Supplementary Information section of the instant notice provides guidance to appellants and examiners as to what constitutes a new ground of rejection under final Bd.R. 41.39.

*Comment 55:* One comment opposed the explanation of new ground of rejection contained in the NPRM as too narrow and as failing to give examiners

''good guidance'' because the examples listed in the NPRM of new grounds for rejection are not exhaustive. The comment suggested deletion of the second sentence of Bd.R. 41.39(a)(2) because it could be interpreted by examiners to imply that only a rejection that relies upon any new evidence is a new ground of rejection that must be designated and approved.

*Response:* The USPTO intends the list to be exemplary. Whether new grounds of rejection have been raised is dependent on the unique factual circumstances of each application or proceeding and any attempt to provide an exhaustive list would be counterproductive.

*Comment 56:* Another comment opposed the explanation of new ground of rejection in the notice of proposed rule making and commented that *In re DeBlauwe,* 736 F.2d 699, 706 n.9 (Fed. Cir. 1984), contains a stronger limitation than the NPRM with respect to what constitutes a new ground of rejection. This comment suggested that a ground of rejection should be considered ''new'' whenever it departs from a previous statement of a ground of rejection, be it by relying on a different portion of the same reference, a different reference or merely different examiner reasoning. The comment further stated that the ''fact specific'' approach proposed by the Office invites abuse by the examining corps.

*Response:* The USPTO appreciates the comments submitted on the proposed guidance on new grounds of rejection. The USPTO will follow applicable law in determining on a case-by-case basis whether a new ground of rejection has been made. While the examples provided in the NPRM are intended to provide sample factual situations based on actual case law, as noted in the notice of proposed rule making, the inquiry of whether a new ground of rejection has been made in each case is highly fact specific. *See, e.g., In re Kronig,* 539 F.2d 1300, 1303 (CCPA 1976). The general test that the USPTO will apply is to determine whether the appellant has had a fair opportunity to respond to the basic thrust of the rejection. *Id.*

*Comment 57:* One comment suggested that whether something constitutes a new ground of rejection should be handled the same whether it appears in a final rejection, an answer, or in a Board decision.

*Response:* For the reasons set forth in the notice of proposed rule making, the USPTO's view is that the question of whether an applicant has had a full and fair opportunity to respond to a rejection depends in part on the stage the application is in when the ground of rejection is first raised (*e.g.,* after final rejection versus after filing an appeal brief, versus in a Board decision). Procedurally, an applicant's opportunity to fully and fairly respond to the rejection differs at different stages of the prosecution. For example, an applicant may be able to submit evidence after a final rejection to rebut a ground of rejection that would not be admissible at the time of filing an appeal brief. *Compare* Rule 1.116(e) and final Bd.R. 41.33(d).

*Comment 58:* Two comments suggested that approval by a Technology Center Director be required for an examiner to reopen prosecution after filing of an appeal brief, and that the reasons for reopening should be delineated clearly for the Record. One comment further suggested that the rules or the MPEP include a requirement that Office actions reopening prosecution include an authorization to search after a reversal.

*Response:* The USPTO declines to adopt these suggestions because they are outside the scope of the proposed rules. The proposed rules do not address reopening of prosecution by the examiner after filing of an appeal brief. Rather, subparagraph (a)(2) of proposed and final Bd.R. 41.39 addresses only new grounds of rejection raised in an examiner's answer, and subparagraph (b)(1) of final Bd.R. 41.39 addresses the appellant's right to reopen prosecution in this instance. MPEP § 1207.04 already requires approval from the supervisory patent examiner to reopen prosecution after appellant's brief or reply brief has been filed. MPEP § 1214.04 also states that the examiner should never regard a reversal as a challenge to make a new search and that if the examiner has specific knowledge of the existence of a particular reference(s) which indicate nonpatentability of any claims, he or she should submit the matter to the Technology Center Director for authorization to reopen prosecution. *See also* 37 CFR 1.198 (after a Board decision has become final, prosecution will not be reopened without the written authority of the Director, and then only for the consideration of matters not already adjudicated, sufficient cause being shown).

*Comment 59:* One comment opposed proposed Bd.R. 41.39(b) to the extent that rights arising out of this paragraph are dependent on the USPTO's designation of a new ground of rejection. The comment suggested that these rights should arise whenever the action meets the definition of a new ground of rejection.

*Response:* The USPTO declines to adopt this suggestion. The final rule provides appellants with a full and fair opportunity to respond to the rejections and to petition if appellants feel that such an opportunity has not been provided.

*Bd.R. 41.40*

*Comment 60:* The majority of the comments favored the proposed rule to toll the time period to file a reply brief. Several of those comments in favor of the proposed rule expressed concern that the rule could be used by appellants in *ex parte* reexamination to delay prosecution. One comment proposed providing an expedited review of *ex parte* patent reexamination petitions by requiring these petitions be filed within a non-extendable period of time from the answer (less than the time for submitting a reply brief) and require that the USPTO make a decision within a set time frame (*i.e.,* 30 days). Another comment suggested that petitions be decided by a party removed from the Technology Center that conducted the examination.

*Response:* The USPTO appreciates the concern raised in these comments. The USPTO declines to adopt the suggestion to set special expedited time limits for *ex parte* reexamination proceedings because depending on workloads and budgetary issues facing the Office, the USPTO cannot guarantee that such petitions will be acted on within any specific time frame; however, the USPTO will take steps to ensure that such petitions are handled expeditiously to avoid the incentive to abuse the petition process simply as a delay tactic. As to the suggestion of how such petitions are decided, the USPTO declines to modify the rule, as this is a matter of internal agency management.

*Comment 61:* One comment opposed the petition procedure under Rule 1.181 because it ''adds unnecessary cost and delay to an already expensive and lengthy appeal process'' and creates delay and inefficiencies at USPTO.

*Response:* Given the majority of comments received in favor of proposed Bd.R. 41.40, the USPTO has decided to include this tolling provision in the final rule. The USPTO's past practice has been for the BPAI to remand any docketed appeal back to the examiner if any undecided petition was pending which had been filed prior to the BPAI's taking jurisdiction. This back-and-forth will be eliminated under the current rule, because the filing of a petition will automatically toll the time for filing a reply brief (and thus the start of the BPAI's jurisdiction). The need to remand a docketed appeal due to a

pending petition will therefore be eliminated under the current rule.

*Comment 62:* One comment suggested defining or deleting the use of ''primary examiner'' in Bd.R. 41.40 because this term is not defined in the CFR or the MPEP.

*Response:* The suggestion is not adopted. The term ''primary examiner'' is used in 35 U.S.C. 134, the 2004 version of Bd.R. 41.39 and previous versions of the rule (*e.g.,* Rule 1.193 (1959)). The USPTO is using ''primary examiner'' in this section to have the same meaning as used in 35 U.S.C. 134 and Bd.R. 41.39.

*Comment 63:* One comment opposed Bd.R. 41.40(b) to the extent that it calls for dismissing the entire appeal if the petition is granted, and then appellant fails to file a reply under Rule 1.111 in the instance where the new ground of rejection does not cover all the appealed claims. The comment suggested in this situation allowing the appeal to proceed and allowing the appellant to treat the newly designated new ground of rejection in his reply brief. If appellant failed to address the new ground of rejection in the reply brief, then the appeal would be terminated as to those claims so rejected, but would continue as to any other appealed claims.

*Response:* The USPTO declines to adopt this suggestion. If an appellant desires to simply respond to the rejection (whether designated as a new ground of rejection or not) in the reply brief, then the appellant should simply file the reply brief within the two-month time period and not file a petition. The rule is written so that appellants will not use the petition process simply as a means to obtain an extension of time on filing a reply brief. There is no advantage to be gained by appellants from petitioning to have a rejection in the answer designated as a new ground of rejection and then simply filing a reply brief to respond to such rejection. Final Bd.R. 41.41 allows appellants to include in reply briefs arguments that are responsive to arguments raised in the examiner's answer.

*Comment 64:* One comment requested clarification of the rule with respect to tolling of time when ''re-petitioning'' or requesting reconsideration of the decision. The comment specifically asked whether an appellant would still be required to file a reply brief within two months of the decision refusing to grant the original Rule 1.181 petition.

*Response:* The rule tolls the time period for filing a reply brief only until the initial petition is decided. Under this rule, the appellant would still be required to file a reply brief within two months of the decision on the initial petition, even if the appellant chooses to request reconsideration of the decision.

*Comment 65:* One comment opposed the new petition procedure because it does not go far enough to allow for tolling of time periods when petitioning to have a new ground of rejection designated that appears in an advisory action or pre-appeal brief conference decision.

*Response:* Appellants have a remedy under Rule 1.181 to file a petition for supervisory review of an examiner's final rejection, advisory action, or pre-appeal brief conference decision, should any of those actions include statements that appellants feel constitute a new ground of rejection to which appellants feel they have not had ''a fair opportunity to respond.''

*Comment 66:* One comment stated that there appears to be no separate mechanism to ensure that examiners fulfill the prima facie case requirement. This comment suggested that the USPTO implement a separate mechanism to allow applicants to request review of whether an examiner has made a prima facie showing prior to appellate review by the Board.

*Response:* This suggestion is outside the scope of the proposed rules. Applicants who believe the examiner has failed to satisfy the notice-function of 35 U.S.C. 132, and thus failed to satisfy the Office's burden of establishing a prima facie case, can raise that issue with the examiner in their response to the office action, and by conducting an interview with the examiner early in the prosecution (*e.g.,* after the first office action). Alternatively, the applicant can challenge the merits of the rejection. But creating a mechanism by which the applicant can first challenge the procedural aspects of the rejection, and then the merits if unsuccessful, is ''both manifestly inefficient and entirely unnecessary.'' *See generally In re Jung,* 637 F.3d 1356, 1363 (Fed. Cir. 2011) (permitting applicant to ''procedurally challenge and appeal the prima facie procedural showing before having to substantively respond to the merits of the rejection * * * is both manifestly inefficient and entirely unnecessary.'').

*Bd.R. 41.41*

*Comment 67:* One comment suggested adding ''within the later of'' before ''two months'' in Bd.R. 41.41(a).

*Response:* The USPTO appreciates the suggested clarification to the language of Bd.R. 41.41(a) and adopts this language in the final rule as it is in keeping with the intent of the proposed rule.

*Comment 68:* One comment suggested that this section of the rule clearly state that there is no requirement to file a reply brief, and that the absence of a reply brief should not raise an inference or presumption that the appellant acquiesces to any new arguments made by the examiner in the answer. The comment stated that even with a designated new ground of rejection, the rule should not require appellants to respond.

*Response:* The USPTO declines to adopt this suggested change. To the extent this comment suggests to make it purely optional for appellants to file a reply brief responding to new grounds of rejection, the Board must receive appellant's explanation as to ''why the examiner erred'' as to the new ground of rejection appellants are contesting in order to review the rejection. The rules, however, do not require appellants to respond to a new ground of rejection if they wish not to challenge that ground of rejection. If no arguments are raised by appellants in response to a new ground of rejection contained in the answer, then the Board appropriately will dispose of the appeal as to those claims subject to the new ground, and the appeal will proceed as to any remaining claims. The USPTO declines to amend the rule explicitly to provide that the absence of a reply brief should not raise an inference or presumption that the appellant acquiesces to any new arguments made by the examiner.

*Comment 69:* One comment requested clarification on the prohibition against including ''new'' or ''non-admitted'' amendments, affidavits or other evidence in briefs, as set forth in Bd.R. 41.41(b)(1), would not bar the submission of items otherwise permitted under Bd.R. 41.33.

*Response:* This comment is addressed above in the response to Comment 12.

*Comment 70:* One comment favored proposed Bd.R. 41.41(b)(2) and suggested a similar rule be adopted with respect to appeal briefs, *i.e.,* that appellants not be able to raise arguments in the appeal brief that have not been raised after a non-final or final action.

*Response:* This comment is addressed above in the response to Comment 36. The USPTO declines to adopt the suggestion to limit the scope of arguments that can be raised by appellants in the appeal brief.

*Comment 71:* One comment opposed proposed Bd.R. 41.41(b)(2) as being overly restrictive and creating a burden on appellants by applying a stricter standard on appellants than on examiners. The comment stated that this limitation will prevent the Board from having a full record on which to make its decision. The comment requested

clarification as to whether arguments in response to a reworded rejection in an examiner's answer would be permitted as falling within the ''good cause'' requirement of the proposed rule. The comment suggested that, to allow the Board to review a fully developed record, the rule should permit appellants to respond to all arguments appearing in the answer that do not appear in haec verbae in the rejection from which the appeal is taken.

*Response:* The rule allows appellants the option to raise arguments in the reply brief which are ''responsive to an argument raised in the examiner's answer,'' including those that do not appear in haec verbae in the appealed rejection. Thus satisfying the good cause requirement would not be necessary.

*Bd.R. 41.43*

*Comment 72:* The USPTO received three comments in favor of eliminating Bd.R. 41.43, which requires the primary examiner to acknowledge receipt and entry of the reply brief and allows examiners to enter a supplemental examiner's answer, and three comments opposed to this change because it would eliminate the examiner's opportunity to consider the reply brief and possibly allow the case or reopen prosecution. One comment requested clarification of whether the Examiner would still review the reply brief.

*Response:* In response to the comments opposing elimination of this section of the rule, USPTO data for the past ten years (FY 2001—FY 2010) shows that examiners allow applications in approximately 1% of all appeals and reopen prosecution in approximately 1% of appeals after the filing of a reply brief. It is most often the case that once the examiner has held an appeal conference on the case and prepared an examiner's answer, the examiner simply acknowledges and enters the reply brief and the appeal proceeds to the Board for review and decision. Meanwhile, USPTO data shows over the same time period that in those cases where the examiner simply acknowledged and entered the reply brief, the average pendency from the filing of a reply brief to the time the examiner acknowledged and entered the reply brief is 55 days. As such, the advantage in shorter pendency received by all appellants from elimination of this section of the rule—at which point, the examiner has held an appeal conference on the case and prepared an examiner's answer—outweighs, in the view of the USPTO, the advantage gained in those rare instances where an appeal may become unnecessary after filing of the reply brief. For these reasons, the final rule eliminates Bd.R. 41.43.

*Bd.R. 41.50*

*Comment 73:* One comment suggested extending the Board's role, as set forth in proposed Bd.R. 41.50(a), to ''allow'' claims in an effort to simplify the procedure after a reversal based on the current power of the Board to act as a ''de facto'' examiner in entering new grounds of rejection under Bd.R. 41.50(b).

*Response:* The USPTO declines to adopt this suggestion, which effectively would turn the Board into an extension of the examining corps. The Board's principal role is to ''review adverse decisions of examiners.'' 35 U.S.C. 6(b). While Bd.R. 41.50 permits the Board to include a new ground of rejection of which it has knowledge in its decision, the Board is not charged with performing the tasks necessary to determine whether claims stand in condition for allowance (*e.g.,* perform searches of prior art). Nor should it be required to do so, given its statutory charge to review adverse examiner decisions.

*Comment 74:* One comment was in favor of eliminating the Board's independent authority to remand appeals in Bd.R. 41.50(a)(1). One comment was opposed to stripping the Board of its power to remand applications because remands are the best available remedy for inadequate fact finding and incomplete examination in some instances. Another comment was opposed to this proposed change to the extent that, even though this proposed modification would remove the independent ability of the Board to remand cases to the examiner, the Board would still be able to do so with approval of the Director and the Director would be reluctant to block the Board's request for a remand and thus the remand process would be complicated rather than simplified.

*Response:* In light of comments received in response to this proposed change and in light of considerations of administrative efficiencies, the USPTO has decided to retain the last sentence of Bd.R. 41.50(a)(1) authorizing the Board to remand an application to the examiner. This change also necessitates retaining Bd.R. 41.50(a)(2), (a)(2)(i), and (a)(2)(ii) to address treatment of the case when a ''substitute'' examiner's answer is written in response to a remand. The USPTO will rely on internal management controls to ensure that this remand authority is used only in situations where remand is proper.

*Comment 75:* One comment suggested amending Bd.R. 41.50(a) to require the Board to decide all rejections on appeal—including, for instance, rejections under 35 U.S.C. 103 if there is also a rejection under 35 U.S.C. 101. The comment stated that if the Board decides only a § 101 rejection that is easily remedied by a Request for Continued Examination, and does not address an art rejection, appellants would be required to file another appeal brief, thereby increasing the number of appeals the Board has to decide.

*Response:* This comment is outside the scope of the NPRM. The USPTO declines to institute a rule dictating how individual panels of the Board must resolve issues in cases that come before them.

*Comment 76:* One comment suggested revising Bd.R. 41.50(b) so that the Board is not allowed to issue decisions containing an affirmance with a new ground of rejection, because these types of decisions preclude applicants from gaining patent term protection that would otherwise be provided by 35 U.S.C. 154(b)(1)(C)(iii). The comment suggested that the Board should reverse the examiner's rejection and enter a new ground of rejection, rather than affirming. The comment also stated that the use of an affirmance and a new ground of rejection introduces confusion about how many times a claim has been rejected—which causes difficulty in the case of RCEs.

*Response:* This comment is outside the scope of the NPRM. The USPTO declines to institute a rule dictating how individual panels of the Board must resolve issues in cases that come before them.

*Comment 77:* One comment suggested that Bd.R. 41.50(b)(1) be revised so that after a decision containing a new ground of rejection, prosecution could be reopened based on appellant argument alone—with no a requirement to submit new evidence. The comment further suggested that the examiner should not be bound by a new ground of rejection in a Board decision because examination should take place in front of the examining corps—not in front of the Board.

*Response:* The USPTO declines to adopt these suggestions. The Board, having made the new ground of rejection and thus having the most complete understanding of the logic and analysis that led to the new ground, is in the best position to evaluate appellant's rebuttal arguments in a request for rehearing. It is only in the instance where appellant chooses to amend the claims or submit new evidence that prosecution must be reopened and the case returned to the examiner to consider the amendment

and/or new evidence in the first instance.

*Comment 78:* Three comments opposed eliminating the Board's power to include a statement of how a claim can be amended to overcome a rejection. One comment stated that use of such a statement would foster cooperation between the Board and appellants. Another comment stated that the statement is merely a suggestion and does not obligate the examiner or the appellant in any way. The third comment stated that the Board should not forego opportunities to suggest how prosecution can be concluded.

*Response:* To clarify, the 2004 version of Bd.R. 41.50(c) allows the Board to include a statement of how a claim on appeal may be amended to overcome a specific rejection. Under the 2004 version of Bd. R. 41.50(c), if the Board includes such a statement, appellant has the *right* to amend the claim in conformity therewith, and such an amendment *will overcome* the specific rejection. Thus, the Board's statement is binding on the examiner, and the examiner may reject a claim so-amended only by instituting a new ground of rejection. As such, this power of the Board under the 2004 rule puts the Board squarely in the shoes of the examiner by allowing the Board to mandate how a claim can be amended to overcome a rejection. The USPTO declines to adopt the suggestion to add back the Board's power to include a statement as to how a claim on appeal may be amended to overcome a specific rejection. In the USPTO's experience, since the adoption of this rule in 2004, this power has been used rarely by the Board, and since the Board's principal function is to review adverse decisions of examiners, and in light of the backlog of appeals at the Board, the USPTO sees no need for the Board to spend judicial resources proposing amendments to the claims.

*Comment 79:* One comment opposed proposed Bd.R. 41.50(c), which provides that failure of an appellant to timely file a request for rehearing seeking review of a panel's failure to designate a new ground of rejection in its decision will constitute a waiver of any arguments that a decision contain an undesignated new ground, stating that this waiver provision is ultra vires, inappropriate because the Board is not an Article III court, and incompatible with the new grounds provisions proposed in the NPRM.

*Response:* This comment is addressed above in the response to Comment 37.

*Bd.R. 41.52*

*Comment 80:* One comment favored the ''flexible approach'' reflected in Bd.R. 41.52(a)(4) that allows appellants to present new arguments when they believe the Board has made a new ground of rejection that has not been so designated.

*Response:* The final rule adopts Bd.R. 41.52(a)(4) as proposed.

*Bd.R. 41.54*

*Comment 81:* One comment opposed proposed Bd.R. 41.54, which requires the Board to return jurisdiction to the examiner after decision by the Board because it would not permit the Board to allow applications and pass them to issuance. The commenter would prefer that the Board be able to review applications and pass them to issuance rather than returning jurisdiction to the examiner.

*Response:* To the extent this comment seeks to have the Board to allow applications and pass them to issuance, the USPTO declines to adopt the suggestion to make the Board into an extension of the examining corps. The Board's principal function is to review adverse decisions of examiners.

*Other Comments Not Related to a Particular Proposed Rule Change*

*Comment 82:* One comment noted that some BPAI decisions have been so brief that it was not possible to determine what arguments the panel found persuasive or unpersuasive. The comment requested that the Board be required by rule to state with particularity their reasoning in reaching a decision and to state which arguments of which party were and were not persuasive.

*Response:* The USPTO declines to adopt a rule that dictates to a particular panel of the Board a specific level of detail of analysis that must be included in each opinion. The level of specificity of the panel's reasons for affirming or reversing a decision of the examiner will vary depending on the particular facts and nature of each appeal.

*Comment 83:* One comment noted a disparity between the amount of time that appellants have to respond and the amount of time that the Board and examiners have to respond. Specifically, the comment suggested that ''however long it takes from the time a brief is filed till an answer is received shall be such length of time as appellant has to file a reply brief'' and that ''however long it takes from the time a reply brief is filed till a board decision is received shall be such length of time as appellant has to file a request for rehearing.''

*Response:* The USPTO has considered the comment but the Office declines to adopt the suggested changes.

*Comment 84:* One comment requested that the USPTO adopt a separate mechanism to rigorously enforce Rule 1.104 and the prima facie case requirement (*i.e.,* a separate appellate body, below the Board, which reviews only whether the examiner made a prima facie case). They further suggest that examiners be required to use the rationales set forth in MPEP § 2143 except if granted an exception from two Supervisory Patent Examiners or a Technology Center Director.

*Response:* The USPTO notes that it has already adopted a separate mechanism for review prior to appeal in the Pre-Appeal Brief Conference pilot program. The USPTO is considering a different rule making initiative that pertains to the pre-appeal brief conference option. As such, the USPTO declines to adopt these suggestions at this time because they are outside the scope of the present proposed rule changes.

*Comment 85:* One comment requested that Image File Wrappers be made text searchable and that applicants be allowed to submit .doc files to the USPTO to reduce the burden on applicants and examiners and to allow the patent bar to prepare statistics on success and failure rates for different prosecution strategies, and to allow the patent bar to identify outlier patent agents, attorneys, examiners, art units, and Board judges who receive or issue either inordinate numbers of rejections or allowances.

*Response:* The USPTO declines to adopt this suggestion because it is outside the scope of the proposed rule changes.

*Comment 86:* Two entities commented on the statistics presented in the NPRM concerning pre-appeal brief conferences and appeal conferences. Specifically, one comment noted that the statistics show that both procedures have been reasonably successful at preventing improper rejections from reaching the Board, but that it is surprising to see no significant change for either type of conference in the percent of cases proceeding to the Board. The comment suggested that USPTO should analyze what these statistics mean with respect to the rest of the examination process, including training efforts to improve quality of final rejections. The other comment noted that the percentage of cases that were reopened or allowed after filing a request for a pre-appeal conference or an appeal brief are ''unacceptably high.'' The comment requested the USPTO

evaluate the entire appeal process, including the steps that lead to an appeal, *i.e.,* final office actions and after final practice.

*Response:* The USPTO thanks the public for their thoughtful comments on ways to improve the patent process. While these suggestions are outside the scope of the proposed rule making, the USPTO appreciates this input.

*Comment 87:* One comment suggested that the pre-appeal brief conference option be included as part of the *ex parte* appeal rules to reflect that this option is an important and significant part of the appeal process.

*Response:* The USPTO declines to adopt this suggestion at this time because it is outside the scope of the proposed rule changes. The USPTO is considering a different rule making initiative that pertains to the pre-appeal brief conference option.

**Rule Making Considerations**

*Executive Order 12866:* This rule making has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

The Office received one comment regarding Executive Order 12866.

*Comment 88:* The comment suggested that the Office should designate all of its rules as having an economically significant effect under Executive Order 12866, either because ''innovation and invention is a substantial part of the American economy,'' or because the commenter alleges the paperwork burdens of the information collections associated with some patent rules cost more than the $100 million threshold for an economically significant action.

*Response:* To the extent that this comment is directed to regulatory actions other than the BPAI rules, the comment is outside the scope of this rule making. To the extent that this comment is directed to the instant regulatory action, the Office notes that it fully complied with Executive Order 12866 in the promulgation of this rule. Moreover, the Office of Information and Regulatory Affairs (OIRA) determines whether the Office's rules are ''significant'' and/or ''economically significant'' under Executive Order 12866. *See* Exec. Order No. 12866, 58 FR 51735, § 6(b)(1) (Sept. 30, 1993). OIRA determined that these rules are ''significant,'' but not ''economically significant.'' Furthermore, there is nothing in Executive Order 12866 that requires that OIRA's analysis begin with the presumption that all rules are economically significant. The Office presents each proposed rule to OIRA, which considers the economic significance of each rule individually. The Office will continue this practice in future rule makings.

*Administrative Procedure Act:* The changes in the final rule relate solely to the procedure to be followed in filing and prosecuting an *ex parte* appeal to the Board. Therefore, these rule changes involve rules of agency practice and procedure under 5 U.S.C. 553(b)(A), and prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A) (or any other law). *See Bachow Commc'ns, Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are ''rules of agency organization, procedure, or practice'' and exempt from the Administrative Procedure Act's notice and comment requirement); *Merck & Co.* v. *Kessler,* 80 F.3d 1543, 1549–50 (Fed. Cir. 1996) (the rules of practice promulgated under the authority of former 35 U.S.C. 6(a) (now in 35 U.S.C. 2(b)(2)) are not substantive rules to which the notice and comment requirements of the Administrative Procedure Act apply); *Fressola* v. *Manbeck,* 36 USPQ2d 1211, 1215 (D.D.C. 1995) (''it is extremely doubtful whether any of the rules formulated to govern patent or trade-mark practice are other than 'interpretive rules, general statements of policy, * * * procedure, or practice' '' (quoting C.W. Ooms, *The United States Patent Office and the Administrative Procedure Act,* 38 Trademark Rep. 149, 153 (1948)).

Because the rule is procedural, it is not required to be published for notice and comment. Nevertheless, the Office published a notice of proposed rule making in the **Federal Register** (75 FR 69828 (Nov. 15, 2010)) in order to solicit public comment before implementing this final rule.

The Office received the following comments regarding the Administrative Procedure Act.

*Comment 89:* The Office received three comments suggesting that these rules are substantive rather than procedural, are required to be promulgated through notice and comment, and must be submitted to the Office of Management and Budget (OMB) for approval and analysis under Executive Order 12866 and to the Small Business Administration (SBA) for review under the Regulatory Flexibility Act.

*Response:* These rules are procedural because they are ''rules of agency organization, procedure, or practice,'' *see* 5 U.S.C. 553(b)(A), and because they do not ''foreclose effective opportunity to make one's case on the merits,'' *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 328 (DC Cir. 1994). The Office declines to accept one commenter's suggestion that any rule that mentions any statute, regulation, or case automatically should be designated as substantive because the rule must automatically affect substantive rights. Such a designation would not comport with administrative law and would render the distinction between procedural and substantive rules meaningless. *See id.* at 327 (''Of course, procedure impacts on outcomes and thus can virtually always be described as affecting substance, but to pursue that line of analysis results in the obliteration of the distinction that Congress demanded. The issue, therefore, is one of degree, and [a court's] task is to identify which substantive effects are sufficiently grave so that notice and comment are needed to safeguard the policies underlying the APA.'' (internal quotations and citations omitted)). Because these rules are procedural, notice and comment were not required under the Administrative Procedure Act (APA) or any other statute. Furthermore, to ensure maximum efficacy of the rules and to provide the public with an opportunity to comment, the Office published notice of the proposed rules in the **Federal Register**, sought comment on the proposed rules, and fully considered and responded to all comments received.

The Office submitted the proposed and final rules to the Office of Management and Budget (OMB) for full review prior to issuance. OMB determined, and the Office agreed, that the final rules are not economically significant within the meaning of Executive Order 12866. Additionally, although analysis under the Regulatory Flexibility Act is not mandatory for procedural rules such as these, the Office fully complied with the Act. Under the Act, an agency need not complete an Initial Regulatory Flexibility Analysis ''if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *See* 5 U.S.C. 605(b). For the reasons set forth at length in the NPRM (75 FR 69828–01, 69843–44), the Deputy General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities, in accordance with 5 U.S.C. 605(b). The SBA's Office of Advocacy did not disagree with this certification.

*Regulatory Flexibility Act:* Prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law. Neither a Regulatory Flexibility Act analysis nor a

certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is applicable to this final rule. *See* 5 U.S.C. 603.

Nonetheless, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that, for the reasons discussed below, this final rule for the Rules of Practice Before the Board of Patent Appeals and Interferences in *Ex Parte* Appeals [RIN 0651–AC37], will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b) (Regulatory Flexibility Act).

There are no fee changes associated with the final rule. The estimates of economic impact provided below are based on agency expertise in patent prosecution practice.

Claims on Appeal

In those instances where appellants wish to appeal all claims under rejection, which are the majority of appeals, there will be a cost savings. The final rule eliminates the requirement for appellants to affirmatively state (by eliminating the status of claims section of the appeal brief) all of the claims on appeal. There may be a slight increase in cost, however, to a small subset of appellants who choose not to appeal all of the rejected claims. For this small subset of appellants, the final rule requires cancellation of any non-appealed claims by filing an amendment.

The Office estimates that, for those appellants choosing to appeal fewer than all of the rejected claims, this change may result in two hours of attorney time toward the preparation of such an amendment. For purposes of comparison, the 2011 report of the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (''the AIPLA 2011 Report'') notes that the median cost for the preparation and filing of a patent application amendment/argument of minimal complexity is $1,800. Using the AIPLA 2011 Report's median billing rate for attorneys in private firms of $340 per hour, this cost equates to approximately 5.3 hours of attorney time. The Office's estimate of two hours of attorney time ($680) for an amendment merely cancelling claims is based on the fact that such an amendment will not contain an argument section, unlike a regular patent application amendment/argument. As such, the Office estimates that the amendment to cancel claims will be significantly less time-consuming than a regular patent application amendment/argument.

Based on the Office's experience, it estimates that such an amendment cancelling claims will only be filed in approximately 1% of appeals. The Board decided *Ex parte Ghuman,* 88 USPQ2d 1478, 2008 WL 2109842 (BPAI 2008) (precedential) in May 2008. Of the approximately 2,056 reported Board decisions and orders issued in the remainder of FY 2008, only ten such decisions and orders cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. In FY 2009 (October 2008–September 2009), of the approximately 5,612 reported Board decisions and orders, only twenty cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. In FY 2010 (October 2009—September 2010), of the approximately 5,990 reported Board decisions and orders, only twenty-six cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. In FY 2011 (October 2010–September 2011), of the approximately 6,126 reported Board decisions and orders, only thirty-five cited *Ghuman* in noting that an appellant had withdrawn claims from appeal. While these numbers may not represent a precise indication of the numbers of appeals where appellants chose not to appeal all of the rejected claims, these figures are provided as an indication of the relatively small number of appeals in which appellants choose to appeal fewer than all of the rejected claims without cancelling such unappealed claims prior to appeal. Based on this data, the Office found that approximately 0.46% of all appeals had *Ghuman* issues, *i.e.,* where fewer than all of the rejected claims were appealed. For purposes of calculating additional cost to appellants from this rule change, the Office rounded up to 1% and used this as a conservative (high) estimate for the number of amendments expected. As this rule change will only impact 1% of all appellants, this final rule will not have a significant economic impact on a substantial number of small entities.

Additionally, for the majority of appellants this final rule will likely result in cost savings. Because the rule had allowed appellants to appeal fewer than all of the claims under rejection, the rule also required appellants to affirmatively state (in the status of claims section of the appeal brief) all of the claims on appeal. Under this final rule, the Board will presume that appellants intend to appeal all claims under rejection unless those claims under rejection for which review is not sought are cancelled. This change to the rule allows the Office to eliminate the requirement for appellants to separately identify the claims on appeal in the appeal brief. Thus, in those instances where appellants wish to appeal all claims under rejection, which represents the majority of appeals, the appellant's burden is lessened by not having to include a listing of the status of all of the claims under rejection.

Changes to Appeal Brief Requirements

The Office also estimates a net cost savings to all appellants as a result of the changes to the appeal brief requirements in the final rule. In particular, the Office estimates a savings due to the elimination of certain appeal brief requirements and changes to other requirements to make them more flexible. The Office estimates a small increase in cost to the subset of appellants who choose to argue claims separately or as a subgroup.

For the subset of appellants who choose to argue claims separately or as a subgroup, the small increase in cost would merely be related to the addition of subheadings before separately argued claims or subgroups. The Office estimates this added burden may increase the time it takes to prepare an appeal brief by 0.2 hours for those appellants who choose to separately argue claims. This estimate is based on the Office's view of the time it would take to add subheadings based on agency expertise in patent prosecution practice. The estimated small increase in cost would not apply to all appeal briefs because some appellants choose to argue all of the claims rejected under a ground of rejection as a single group. However, since the Office does not track the number of appeals in which appellants argue all claims as a single group versus the number of appeals in which appellants argue some claims separately, the Office has applied this increase to the estimate of all appeal briefs filed. Applying this increase to the estimate of all appeal briefs filed still will not have a significant economic impact on a substantial number of small entities.

Notably, the overall changes to the appeal brief requirements in the final rule will result in net savings to all appellants. By allowing more flexibility in how an appellant chooses to present an appeal to the Board and by eliminating many appeal brief requirements, appellants will incur less cost overall in preparation of appeal briefs. As discussed *infra* in the Paperwork Reduction Act section of the notice, the Office estimates a net average savings in preparation time under the final rule of two hours of attorney time as compared to the previous estimate

under the 2004 rules. This estimate is based on the Office's view of the net time saved in preparation of an appeal brief as a result of the final rule based on agency expertise in patent prosecution practice. As such, the overall average attorney time and cost it will take to prepare an appeal brief under the final rule will be reduced from 34 hours ($11,560) to 32 hours ($10,880). Using the median billing rate of $340 per hour, as published in the AIPLA 2011 Report, the Office estimates that the final rule will result in an average savings of $680 per appeal brief. This savings will apply equally to large and small entities.

Accordingly, any costs related to the filing of an amendment cancelling claims and the addition of subheadings to an appeal brief will not have a significant economic impact on a substantial number of small entities. Moreover, this final rule as a whole will likely result in a net cost savings to appellants and, therefore, also will not have a significant economic impact on a substantial number of small entities.

*Unfunded Mandates:* The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule would have no such effect on State, local, and tribal governments or the private sector.

*Executive Order 13132:* This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

*Executive Order 13563 (Improving Regulation and Regulatory Review):* The Office has complied with Executive Order 13563 (Jan. 8, 2011). Specifically, the Office has: (1) Used the best available techniques to quantify costs and benefits, and has considered values such as equity, fairness and distributive impacts; (2) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected, by issuing a notice of proposed rule making and providing on-line access to the rule making docket; (3) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (4) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (5) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

*Paperwork Reduction Act:* This final rule involves information collection requirements which are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information in the rule have been reviewed and previously approved by OMB under control numbers 0651–0031 and 0651–0063.

As stated above in the Regulatory Flexibility Act section of this notice, while the majority of the changes to the rule will either have no impact on or will lessen the burden to the public as compared to the collection of information previously approved by OMB, the Office has identified two changes that may, in certain circumstances, increase the burden to the public.

Specifically, the Office has estimated that final Bd.R. 41.31(c) will impose an increased burden of two hours of added time to a small subset of appellants (1%) who choose not to seek review of all claims under rejection by requiring such appellants to file an amendment cancelling any unappealed claims, or otherwise have the Board treat all rejected claims as being on appeal. Additionally, the Office estimated that the change to the briefing requirements in final Bd.R. 41.37(c)(1)(iv)(renumbered) (requiring appellants to place any claim(s) argued separately or as a subgroup under a separate subheading that identifies the claim(s) by number) would result in 0.2 hours of added time for those appellants who choose to separately argue their claims. These estimates are based on the Office's expertise in patent prosecution practice. This increase in burden hours would not apply to all appeal briefs because some appellants choose to argue all of the claims rejected under a ground of rejection as a single group. However, since the Office does not track the number of appeals in which appellants argue all claims as a single group versus the number of appeals in which appellants argue some claims separately, for purposes of estimating the overall burden, the Office has applied this 0.2 hour increase to the estimate of all appeal briefs filed.

The Office has also specifically identified below at least nine changes in the final rule that will lessen the burden to the public as compared to the 2004 rule.

1. Final Bd.R. 41.12(b) lessens the burden on appellant by removing the requirement for appellant to include parallel citations (Bd.R. 41.12(a)(2)–(3)) to both the West Reporter System and to the United States Patents Quarterly for any decision other than a United States Supreme Court decision, and further lessens the burden on appellant by no longer requiring citation to a particular reporter.

2. Final Bd.R. 41.37(c)(1)(i) lessens the burden on appellant because it provides for a default in the event that this item is omitted from the brief, such that appellant is not required to include this section in the brief if the inventors are the real party in interest.

3. Final Bd.R. 41.37(c)(1)(ii) lessens the burden on appellant because it (a) Limits the duty to provide information as to only those related cases that involve an application or patent co-owned by appellant or assignee; (b) provides a default assumption in the event that this item is omitted from the brief so that appellants are no longer required to make a statement that ''there are no such related cases''; and (c) no longer requires filing of copies of decisions in related proceedings.

4. The final rule lessens the burden on appellant by eliminating the requirement under the 2004 rule (specifically Bd.R. 41.37(c)(1)(iii)) for appellant to identify the status of claims in the appeal brief.

5. The final rule lessens the burden on appellant by eliminating the requirement under the 2004 rule (specifically Bd.R. 41.37(c)(1)(iv)) for appellant to include a statement of the status of any amendments.

6. Final Bd.R. 41.37(c)(1)(iii) (renumbered) lessens the burden on appellant by providing more flexibility than corresponding Bd.R. 41.37(c)(1)(v) by allowing citation to paragraph number (instead of limiting citation to page and line number). The final rule also clarifies the current Office policy, which does not allow reference to the patent application publication in the summary of claim subject matter. Since improper reference to the patent application publication is a current cause of defective briefs, this rule change is intended to reduce confusion and thereby reduce the number of defective briefs.

7. The final rule lessens the burden on appellant by eliminating the requirement under the 2004 rule (specifically Bd.R. 41.37(c)(1)(vi)) for appellant to state the grounds of rejection to be reviewed on appeal in the appeal brief. The Board would look to documents already of Record (*i.e.,* the Office action from which the appeal is taken and any subsequent Advisory Action or Pre-Appeal Conference Decision) to determine the grounds of rejection on appeal.

8. Final Bd.R. 41.37(c)(1)(iv) (renumbered) lessens the burden on appellant by allowing appellant's headings to ''reasonably identify the ground being contested (*e.g.,* by claim number, statutory basis, and applied reference, if any).'' The corresponding Bd.R. 41.37(c)(1)(vii) (the 2004 rule) has occasionally been interpreted as a verbatim requirement and resulted in briefs being found defective for failure to state the ground of rejection in the heading exactly the same as stated in the Office action from which the appeal was taken. The final rule clarifies that this is not a verbatim requirement and allows more flexibility in the brief.

9. The final rule lessens the burden on appellant by eliminating the requirement under the 2004 rule (specifically Bd.R. 41.37(c)(1)(x)) for appellants to file a related proceedings appendix containing copies of decisions in related proceedings. The Board will look to the records in the Office and other publicly available sources to locate and review decisions rendered in any related proceedings.

In the approved information collection [OMB Control Number 0651–0063], the Office estimated the average appeal brief took 34 hours to prepare. In light of the changes in the final rule (final Bd.R. 41.37) as compared to the 2004 rule for briefing requirements for filing appeal briefs, and taking into account the nine changes that will lessen the burden and the one change (*i.e.,* addition of subheadings) that will add a burden, the agency estimates that the changes in the final rule as compared to the 2004 rule will result in a net average decrease of approximately 2 hours per appeal brief from the prior estimate, thereby lowering the previous average estimate of approximately 34 hours to 32 hours to prepare an appeal brief. This estimate is based on the net impact of the changes and time saved in preparation of an appeal brief based on agency expertise in patent prosecution practice. Using the median billing rate of $340 per hour, as published in the AIPLA 2011 Report, the Office estimates that these rule changes will result in an average savings of $680 per appeal brief.

The Office notes that the number and significance of these changes effecting a lessening of the burden to appellants substantially outweigh the changes that may result, in certain circumstances, in increased burden to appellants. The Office submitted an information collection package to OMB for its review and approval at the same time as publication of the NPRM and OMB pre-approved the information collection. The Office also submitted an updated information collection package to OMB concurrently with this final rule for its review and approval in light of the changes made in the final rule as compared to the rule as proposed in the NPRM, and OMB approved the updated information collection package.

The USPTO received several comments regarding the information collection submitted to OMB along with the NPRM.

*Comment 90:* The Office received a comment suggesting that it make clear where the supporting statement for the Information Collection Request for this rule may be obtained.

*Response:* The supporting statement is available at *http://www.reginfo.gov/public/do/PRAMain* under OMB control number 0651–0063. *See* Proposed Modification Supporting NPRM RIN 0651–AC37 (Rules of Practice Before the Board of Patent Appeals and Interferences in Ex Parte Appeals), 2 (Nov. 4, 2010), *http://www.reginfo.gov/public/do/PRAMain* (OMB Control No. 0651–0063) (hereinafter ''Supporting Statement'').

*Comment 91:* The Office received a comment claiming that the Office had not explained the practical utility of the information it sought to collect through amendments to appeal briefs, reply briefs, and requests for rehearing.

*Response:* The Office fully explained the need for this information in the supporting statement accompanying this information collection request, under the section entitled ''Needs and Uses,'' which explained that the collections were necessary so the Board could identify the claims the appellant wanted to appeal, and that the burdens for collecting this information had changed because the new rules decreased the paperwork burden on appellants. *See* Supporting Statement at 2.

*Comment 92:* The Office received two comments suggesting that the burden estimates in the Supporting Statement were not supported by objective data and allegedly based on opinion and belief.

*Response:* In general, estimates of the number of responses expected per year for any particular item in the collection are derived from the internal data collected from PALM, and/or IFW and the data from previous iterations of the renewal process. If data from PALM or IFW is available for a particular item in the collection, the data is examined to determine whether a trend exists that can be used to provide annual estimates for the item for the next three years. If data from PALM or IFW is not available for an item, *e.g.,* if the item is a new item, response estimates are arrived at from an analysis of PALM or IFW data for a closely analogous item(s) in the same or another collection. This data is then combined with the Office's corporate planning and budget estimations to forecast the estimates for data for the next three years to include considerations such as the Office's projections for the growth in the number of patent applications. Agency expertise in patent prosecution practice is relied upon to confirm a reasonable basis for any trend suggested by the data and to identify the most closely analogous item(s), and Agency expertise in corporate planning is relied upon to project estimates over the next three years. Estimates of the hours per response for items in the collection are derived from data from the biennial AIPLA economic survey report, data from previous iterations of the renewal process, and Agency expertise in patent prosecution practice. To the extent that the Office uses staff expertise in crafting estimates, the BPAI on its own has many years of combined USPTO and non-USPTO patent prosecution experience, and the BPAI is but one of the offices involved in providing information contained in the Supporting Statement. Other offices include the Office of Planning and Budget and the Office of the Chief Economist. This prosecution experience spans multiple technologies and provides views from various perspectives, including the perspectives of former patent agents, associate attorneys, and law firm partners, working with both small and non-small entity patent applicants. One commenter suggested that the informed expertise of the BPAI staff should be replaced with the opinions and beliefs of commenters of unverified expertise. This suggestion would result in less verifiable and less trustworthy data. Accordingly, the Office does not adopt this suggestion. The Supporting Statement is substantively objective in that it presents all information in an ''accurate, clear, complete, unbiased manner, and within the proper context.'' USPTO's Information Quality Guidelines, § IV, 6, a, *http://www.uspto.gov/products/cis/infoqualityguidelines.jsp* (hereinafter ''USPTO's IQG'').

*Comment 93:* The Office received a comment suggesting that its reliance on third party data such as the AIPLA economic survey in determining the burden estimates for the proposed information collections associated with this rule violated the Information Quality Act (IQA).

*Response:* In providing estimates of burden hours, the Office sometimes referenced the AIPLA economic survey report, as a benchmark for the estimates. Under the Office's Information Quality

Guidelines (IQG), the AIPLA economic survey report is not a ''dissemination'' of information. The Guidelines state that ''dissemination'' means an ''agency initiated or sponsored distribution of information to the public.'' USPTO's IQG, at § IV, A, 1. Subsection (a) further defines ''agency initiated distribution of information to the public'' to mean ''information that the agency distributes or releases which reflects, represents, or forms any part of the support of the policies of the agency.'' *Id.* at § IV, A, 1, a. The Office did not distribute or release the AIPLA economic survey report. Likewise, the AIPLA economic survey report does not qualify as an ''agency sponsored distribution of information'' under Subsection (b) of the Guidelines, which ''refers to situations where the agency has directed a third party to distribute or release information, or where the agency has the authority to review and approve the information before release.'' *Id.* at § IV, A, 1, b. The Office did not commission the report, had no input into the structure of the report and does not rely exclusively upon the results of the report to arrive at estimates. Thus, there is no violation under the IQA because the Office utilized the AIPLA economic survey report in formulating some burden estimations.

*Comment 94:* The Office received a comment asking if these rules inappropriately shift the paperwork burden onto applicants and away from the USPTO.

*Response:* As explained in the NPRM, the vast majority of the changes to this rule will either decrease the paperwork burden on applicants or have no effect on the paperwork burden. The only changes that the Office estimates would add to any applicant's paperwork burden are (1) The requirement that appellants cancel any unappealed claims and (2) the requirement that subheadings with claim numbers be used to identify the claims or groups of claims argued in that particular section. With regard to the first change, for 99% of appellants, this change will shift the paperwork burden away from appellants because they will no longer need to identify which claims they wish to appeal. For the 1% of appellants who do not pursue appeals of all of their claims, this rule will result in a slight increase in paperwork because they will be required to identify which claims they are not appealing. Both changes appropriately place the burden on the appellant because only the appellant is in a position to know which claims the appellant wants to appeal and the appellant is in the best position to know which claims the appellant intends to argue in each section of the appeal brief.

*Comment 95:* One commenter noted a typographical error in the Supporting Statement.

*Response:* The Office has corrected this error so that the Supporting Statement now reads, ''The Information Quality Guidelines * * * apply to this information collection and *this information collection and its supporting statement* comply with all applicable information quality guidelines * * *.'' *See* Supporting Statement at 3.

*Comment 96:* The Office received two comments suggesting it should have used the mean rather than the median when calculating the average hourly rate and cost of the paperwork burden created by these rules.

*Response:* OMB regulations do not require a particular arithmetic technique for calculating burden estimates. Nothing in the plain text of the regulation or the Office's IQG suggests that mean values are required or that an agency's use of median values is inappropriate. *See San Luis & Delta-Mendota Water Auth.* v. *Salazar,* 2010 WL 5422597, at *88–93 (E.D. Ca. 2010) (holding that nothing in the IQA or the agency's guidelines on the IQA mandated how the agency conducted its calculations). 5 CFR 1320.8(b)(3)(iii) simply requires an agency to provide ''an estimate, to the extent practicable, of the average burden of the collection.'' The Office considers the median figure to be an appropriate value upon which to base estimates because attorneys charging both above the median and below the median would be expected to participate in the process. Supporting Statement at 9. Accordingly, the burden calculations need no correction.

*Comment 97:* The Office received one comment claiming that it must disclose the data, models, and analyses used to estimate the PRA burdens and requesting correction of the supporting statement to include that information.

*Response:* The basis for providing various estimates is explained in the Supporting Statement and further detailed in the responses to these comments. Under the IQA, certain influential information must be reproducible under certain circumstances. The burden ''estimates'' of which the commenter complains do not qualify as ''information'' within the meaning of the IQA. ''Information'' is defined as ''any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms.'' USPTO's IQG, Section IV, A, 4. By definition, estimates do not represent knowledge such as facts or data. ''Information,'' not estimation, is subject to certain reproducibility requirements. *See* USPTO's IQG, Section IV, 7 (''reproducibility'' means the ''information is capable of being substantially reproduced, subject to an acceptable degree of imprecision.''). No correction is warranted for matters not involving ''information.'' *See* USPTO's IQG, Section XI, A, 4, a.

*Comment 98:* The Office also received a comment requesting the source of the data in the NPRM on the number of requests for pre-appeal brief conference and appeal conference review the Office receives each year.

*Response:* The Office tracks this information in PALM.

*Comment 99:* The Office received a comment suggesting it does not adequately consider public comments on Information Collection Requests (ICRs).

*Response:* The Office greatly appreciates the time and effort the public expends commenting on ICRs and proposed rules. The Office fully considers all comments and strives to incorporate these comments to the greatest extent possible to improve the ICRs and rules it promulgates.

*Comment 100:* The Office received a comment on Bd.R. 41.33(d)(1) suggesting that the rule precluding affidavits filed after the date of filing an appeal and prior to the date of filing a brief under some circumstances does not comply with the Paperwork Reduction Act's requirement to minimize the paperwork burden on the public because the precluded affidavit may have convinced the examiner to reconsider the rejection and obviated the need for the appeal.

*Response:* First, no change has been proposed to this long-standing practice of the USPTO. Second, the Office is not requesting information in the form of late-submitted affidavits; in most cases it will not even accept such information. And finally, to the extent that the commenter suggests that the Paperwork Reduction Act issue comes not from the affidavit itself but from the appeal that may result from the inability to submit the affidavit, the Office disagrees that this affects the burden on the appellant. Appellant may still request continued examination under 37 CFR 1.114 rather than pursue an appeal.

*Comment 101:* One commenter suggested that the Office is required by the Paperwork Reduction Act to submit an Information Collection Request for oral hearings before the BPAI.

*Response:* The Paperwork Reduction Act does not apply to oral hearings.

First, under the Act, a ''collection of information'' is defined as collecting information ''by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons * * *.'' *See* 5 CFR 1320.3(c). Oral hearings do not involve identical questions posed to 10 or more persons and thus are not ''collections of information.'' Furthermore, the facts and arguments recited at an oral hearing do not constitute ''information'' under the Paperwork Reduction Act because the Act specifies that '' '[i]nformation' does not generally include items in the following categories * * *: (6) A request for facts or opinions addressed to a single person.'' *See* 5 CFR 1320.3(h)(6). Accordingly, the Act does not require the Office to submit an Information Collection Request for oral hearings and the Office has not submitted such a request.

*Comment 102:* One commenter suggested that the Office did not comply with the Paperwork Reduction Act because it allegedly did not seek public comment on the estimation of burden hours for the new rules before publishing the NPRM in the **Federal Register**.

*Response:* The commenter misunderstands the Paperwork Reduction Act. The Paperwork Reduction Act clearly states that ''[t]he agency need not separately seek such public comment for any proposed collection of information contained in a proposed rule to be reviewed under § 1320.11, if the agency provides notice and comment through the notice of proposed rulemaking for the proposed rule * * *.'' 5 CFR 1320.8(d)(3). Because this collection associated with these rules is a collection of information in a proposed rule under 5 CFR 1320.11, the Office was not required to seek public comment beyond notice and comment through the NPRM. Moreover, the Office did seek public participation prior to publishing the NPRM. The USPTO conducted a roundtable discussion with the public on the Board rules.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number. The valid OMB control number assigned to these final regulations is OMB Control Number 0651–0063.

This final rule supersedes the rules governing practice before the Board in *ex parte* patent appeals (as published in 69 FR 50003 (August 12, 2004)). *See* 37 CFR 41.1 *et seq.* (2010). The Office also withdraws the indefinitely delayed 2008 final rule (73 FR 32938 (June 10, 2008)) that never went into effect.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

*37 CFR Part 41*

Administrative practice and procedure, Inventions and patents, Lawyers.

**Amendments to the Regulatory Text**

For the reasons discussed in the preamble, under the authority of 35 U.S.C. 2(b)(2), the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office withdraws the final rule published June 10, 2008 (73 FR 32938) and amends Parts 1 and 41 of title 37 of the Code of Federal Regulations as follows:

## PART 1—RULES OF PRACTICE IN PATENT CASES

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

**Authority:** 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Amend § 1.197 by revising the section heading and removing and reserving paragraph (a). The revision reads as follows:

### § 1.197 Termination of proceedings.

* * * * *

## PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 3. Revise the authority citation for part 41 to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 132, 133, 134, 135, 306, and 315.

## Subpart A—General Provisions

■ 4. Revise § 41.12 to read as follows:

### § 41.12 Citation of authority.

(a) For any United States Supreme Court decision, citation to the United States Reports is preferred.

(b) For any decision other than a United States Supreme Court decision, citation to the West Reporter System is preferred.

(c) Citations to authority must include pinpoint citations whenever a specific holding or portion of an authority is invoked.

(d) Non-binding authority should be used sparingly. If the authority is not an authority of the Office and is not reproduced in the United States Reports or the West Reporter System, a copy of the authority should be provided.

## Subpart B—*Ex parte* Appeals

■ 5. Amend § 41.30 by adding definitions for ''evidence'' and ''record'' in alphabetical order to read as follows:

### § 41.30 Definitions.

* * * * *

*Evidence* means something (including testimony, documents and tangible objects) that tends to prove or disprove the existence of an alleged fact, except that for the purpose of this subpart *Evidence* does not include dictionaries, which may be cited before the Board.

* * * * *

*Record* means the items listed in the content listing of the Image File Wrapper of the official file of the application or reexamination proceeding on appeal or the official file of the Office if other than the Image File Wrapper, excluding amendments, Evidence, and other documents that were not entered. In the case of an issued patent being reissued or reexamined, the *Record* further includes the *Record* of the patent being reissued or reexamined.

■ 6. Amend § 41.31 by revising paragraphs (a) introductory text, (b), and the first sentence of paragraph (c) to read as follows:

### § 41.31 Appeal to Board.

(a) *Who may appeal and how to file an appeal.* An appeal is taken to the Board by filing a notice of appeal.

* * * * *

(b) The signature requirements of §§ 1.33 and 11.18(a) of this title do not apply to a notice of appeal filed under this section.

(c) An appeal, when taken, is presumed to be taken from the rejection of all claims under rejection unless cancelled by an amendment filed by the applicant and entered by the Office.

* * *

* * * * *

■ 7. Amend § 41.33 by revising the section heading, and revising paragraphs (c) and (d) to read as follows:

### § 41.33 Amendments and affidavits or other Evidence after appeal.

* * * * *

(c) All other amendments filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be

admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i), and 41.50(b)(1).

(d)(1) An affidavit or other Evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) and prior to the date of filing a brief pursuant to § 41.37 may be admitted if the examiner determines that the affidavit or other Evidence overcomes all rejections under appeal and that a showing of good and sufficient reasons why the affidavit or other Evidence is necessary and was not earlier presented has been made.

(2) All other affidavits or other Evidence filed after the date of filing an appeal pursuant to § 41.31(a)(1) through (a)(3) will not be admitted except as permitted by §§ 41.39(b)(1), 41.50(a)(2)(i), and 41.50(b)(1).

■ 8. Revise § 41.35 to read as follows:

**§ 41.35 Jurisdiction over appeal.**

(a) *Beginning of jurisdiction.* Jurisdiction over the proceeding passes to the Board upon the filing of a reply brief under § 41.41 or the expiration of the time in which to file such a reply brief, whichever is earlier.

(b) *End of jurisdiction.* The jurisdiction of the Board ends when:

(1) The Director or the Board enters a remand order (*see* §§ 41.35(c), 41.35(e), and 41.50(a)(1)),

(2) The Board enters a final decision (*see* § 41.2) and judicial review is sought or the time for seeking judicial review has expired,

(3) An express abandonment which complies with § 1.138 of this title is recognized,

(4) A request for continued examination is filed which complies with § 1.114 of this title,

(5) Appellant fails to take any required action under §§ 41.39(b), 41.50(a)(2), 41.50(b), or 41.50(d), and the Board enters an order of dismissal, or

(6) Appellant reopens prosecution pursuant to § 41.40(b) or in response to a new ground of rejection entered in a decision of the Board (*see* § 41.50(b)(1)).

(c) *Remand ordered by the Director.* Prior to the entry of a decision on the appeal by the Board (*see* § 41.50), the Director may sua sponte order the proceeding remanded to the examiner.

(d) *Documents filed during Board's jurisdiction.* Except for petitions authorized by this part, consideration of any information disclosure statement or petition filed while the Board possesses jurisdiction over the proceeding will be held in abeyance until the Board's jurisdiction ends.

(e) *Administrative remands ordered by the Board.* If, after receipt and review of the proceeding, the Board determines that the file is not complete or is not in compliance with the requirements of this subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the file.

■ 9. Amend § 41.37 by:

■ a. Adding headings to paragraphs (a), (b), (c), (d) and (e);

■ b. Revising paragraph (c);

■ d. Revising the second sentence in paragraph (d); and

■ e. Adding new third and fourth sentences to paragraph (d).

The revisions and additions read as follows:

**§ 41.37 Appeal brief.**

(a) *Timing and fee.* * * *

(b) *Failure to file a brief.* * * *

(c) *Content of appeal brief.* (1) Except as otherwise provided in this paragraph, the brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (v) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(1)(v) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest at the time the appeal brief is filed, except that such statement is not required if the named inventor or inventors are themselves the real party in interest. If an appeal brief does not contain a statement of the real party in interest, the Office may assume that the named inventor or inventors are the real party in interest.

(ii) *Related appeals and interferences.* A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings (collectively, ''related cases'') which satisfy all of the following conditions: Involve an application or patent owned by the appellant or assignee, are known to appellant, the appellant's legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, except that such statement is not required if there are no such related cases. If an appeal brief does not contain a statement of related cases, the Office may assume that there are no such related cases.

(iii) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the rejected independent claims, which shall refer to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. For each rejected independent claim, and for each dependent claim argued separately under the provisions of paragraph (c)(1)(iv) of this section, if the claim contains a means plus function or step plus function recitation as permitted by 35 U.S.C. 112, sixth paragraph, then the concise explanation must identify the structure, material, or acts described in the specification in the Record as corresponding to each claimed function with reference to the specification in the Record by page and line number or by paragraph number, and to the drawing, if any, by reference characters. Reference to the patent application publication does not satisfy the requirements of this paragraph.

(iv) *Argument.* The arguments of appellant with respect to each ground of rejection, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the Record relied on. The arguments shall explain why the examiner erred as to each ground of rejection contested by appellant. Except as provided for in §§ 41.41, 41.47 and 41.52, any arguments or authorities not included in the appeal brief will be refused consideration by the Board for purposes of the present appeal. Each ground of rejection contested by appellant must be argued under a separate heading, and each heading shall reasonably identify the ground of rejection being contested (*e.g.,* by claim number, statutory basis, and applied reference, if any). For each ground of rejection applying to two or more claims, the claims may be argued separately (claims are considered by appellant as separately patentable), as a group (all claims subject to the ground of rejection stand or fall together), or as a subgroup (a subset of the claims subject to the ground of rejection stand or fall together). When multiple claims subject to the same ground of rejection are argued as a group or subgroup by appellant, the Board may select a single claim from the group or subgroup and may decide the appeal as to the ground of rejection with respect to the group or subgroup on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Under each heading identifying the ground of rejection being contested, any claim(s) argued separately or as a subgroup shall be

argued under a separate subheading that identifies the claim(s) by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

(v) *Claims appendix.* An appendix containing a copy of the claims involved in the appeal.

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other Evidence. *See* § 1.116 of this title for treatment of amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for treatment of amendments, affidavits or other Evidence filed after the date of filing the appeal. Review of an examiner's refusal to admit an amendment or Evidence is by petition to the Director. *See* § 1.181 of this title.

(d) *Notice of non-compliance.* * * * If appellant does not, within the set time period, file an amended brief that overcomes all the reasons for non-compliance stated in the notification, the appeal will stand dismissed. Review of a determination of non-compliance is by petition to the Chief Administrative Patent Judge. *See* § 41.3.

(e) *Extensions of time.* * * *

■ 10. Amend § 41.39 by revising paragraph (a); adding a heading to paragraph (b) introductory text; revising the first two sentences of paragraph (b)(1); revising the second, third, and fourth sentences of paragraph (b)(2); and adding a heading to paragraph (c) to read as follows:

**§ 41.39 Examiner's answer.**

(a) *Content of examiner's answer.* The primary examiner may, within such time as may be directed by the Director, furnish a written answer to the appeal brief.

(1) An examiner's answer is deemed to incorporate all of the grounds of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory action and pre-appeal brief conference decision), unless the examiner's answer expressly indicates that a ground of rejection has been withdrawn.

(2) An examiner's answer may include a new ground of rejection. For purposes of the examiner's answer, any rejection that relies upon any Evidence not relied upon in the Office action from which the appeal is taken (as modified by any advisory action) shall be designated by the primary examiner as a new ground of rejection. The examiner must obtain the approval of the Director to furnish an answer that includes a new ground of rejection.

(b) *Appellant's response to new ground of rejection.* * * *

(1) * * * Request that prosecution be reopened before the primary examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this of this title) or other Evidence. Any amendment or submission of affidavits or other Evidence must be relevant to the new ground of rejection. * * *

(2) * * * Such a reply brief must address as set forth in § 41.37(c)(1)(iv) each new ground of rejection and should follow the other requirements of a brief as set forth in § 41.37(c). A reply brief may not be accompanied by any amendment, affidavit (§§ 1.130, 1.131 or 1.132 of this of this title) or other Evidence. If a reply brief filed pursuant to this section is accompanied by any amendment, affidavit or other Evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under paragraph (b)(1) of this section.

(c) *Extensions of time.* * * *

■ 11. Add § 41.40 to read as follows:

**§ 41.40 Tolling of time period to file a reply brief.**

(a) *Timing.* Any request to seek review of the primary examiner's failure to designate a rejection as a new ground of rejection in an examiner's answer must be by way of a petition to the Director under § 1.181 of this title filed within two months from the entry of the examiner's answer and before the filing of any reply brief. Failure of appellant to timely file such a petition will constitute a waiver of any arguments that a rejection must be designated as a new ground of rejection.

(b) *Petition granted and prosecution reopened.* A decision granting a petition under § 1.181 to designate a new ground of rejection in an examiner's answer will provide a two-month time period in which appellant must file a reply under § 1.111 of this title to reopen the prosecution before the primary examiner. On failure to timely file a reply under § 1.111, the appeal will stand dismissed.

(c) *Petition not granted and appeal maintained.* A decision refusing to grant a petition under § 1.181 of this title to designate a new ground of rejection in an examiner's answer will provide a two-month time period in which appellant may file only a single reply brief under § 41.41.

(d) *Withdrawal of petition and appeal maintained.* If a reply brief under § 41.41 is filed within two months from the date of the examiner's answer and on or after the filing of a petition under § 1.181 to designate a new ground of rejection in an examiner's answer, but before a decision on the petition, the reply brief will be treated as a request to withdraw the petition and to maintain the appeal.

(e) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

■ 12. Amend § 41.41 by revising paragraph (a) and paragraph (b), and adding a heading to paragraph (c) to read as follows:

**§ 41.41 Reply brief.**

(a) *Timing.* Appellant may file only a single reply brief to an examiner's answer within the later of two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 of this title to designate a new ground of rejection in an examiner's answer.

(b) *Content.* (1) A reply brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other Evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other Evidence filed after the date of filing the appeal.

(2) Any argument raised in the reply brief which was not raised in the appeal brief, or is not responsive to an argument raised in the examiner's answer, including any designated new ground of rejection, will not be considered by the Board for purposes of the present appeal, unless good cause is shown.

(c) *Extensions of time.* * * *

**§ 41.43 [Removed]**

■ 13. Remove § 41.43.

■ 14. Amend § 41.47 by revising paragraph (b) and by revising the second and third sentences of paragraph (e)(1) to read as follows:

**§ 41.47 Oral hearing.**

* * * * *

(b) If appellant desires an oral hearing, appellant must file, as a separate paper captioned ''REQUEST FOR ORAL HEARING,'' a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or on the date of

filing of a reply brief, whichever is earlier.

* * * * *

(e)(1) * * * At the oral hearing, appellant may only rely on Evidence that has been previously entered and considered by the primary examiner and present argument that has been relied upon in the brief or reply brief except as permitted by paragraph (e)(2) of this section. The primary examiner may only rely on argument and Evidence relied upon in an answer except as permitted by paragraph (e)(2) of this section.

* * * * *

■ 15. Revise § 41.50 to read as follows:

**§ 41.50 Decisions and other actions by the Board.**

(a)(1) *Affirmance and reversal.* The Board, in its decision, may affirm or reverse the decision of the examiner in whole or in part on the grounds and on the claims specified by the examiner. The affirmance of the rejection of a claim on any of the grounds specified constitutes a general affirmance of the decision of the examiner on that claim, except as to any ground specifically reversed. The Board may also remand an application to the examiner.

(2) If a substitute examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must within two months from the date of the substitute examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding:

(i) *Reopen prosecution.* Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other Evidence. Any amendment or submission of affidavits or other Evidence must be relevant to the issues set forth in the remand or raised in the substitute examiner's answer. A request that complies with this paragraph (a) will be entered and the application or the patent under *ex parte* reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

(ii) *Maintain appeal.* Request that the appeal be maintained by filing a reply brief as provided in § 41.41. If such a reply brief is accompanied by any amendment, affidavit or other Evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(i) of this section.

(b) *New ground of rejection.* Should the Board have knowledge of any grounds not involved in the appeal for rejecting any pending claim, it may include in its opinion a statement to that effect with its reasons for so holding, and designate such a statement as a new ground of rejection of the claim. A new ground of rejection pursuant to this paragraph shall not be considered final for judicial review. When the Board enters such a non-final decision, the appellant, within two months from the date of the decision, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the prosecution will be remanded to the examiner. The new ground of rejection is binding upon the examiner unless an amendment or new Evidence not previously of Record is made which, in the opinion of the examiner, overcomes the new ground of rejection designated in the decision. Should the examiner reject the claims, appellant may again appeal to the Board pursuant to this subpart.

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. The request for rehearing must address any new ground of rejection and state with particularity the points believed to have been misapprehended or overlooked in entering the new ground of rejection and also state all other grounds upon which rehearing is sought.

(c) *Review of undesignated new ground of rejection.* Any request to seek review of a panel's failure to designate a new ground of rejection in its decision must be raised by filing a request for rehearing as set forth in § 41.52. Failure of appellant to timely file such a request for rehearing will constitute a waiver of any arguments that a decision contains an undesignated new ground of rejection.

(d) *Request for briefing and information.* The Board may order appellant to additionally brief any matter that the Board considers to be of assistance in reaching a reasoned decision on the pending appeal. Appellant will be given a time period within which to respond to such an order. Failure to timely comply with the order may result in the sua sponte dismissal of the appeal.

(e) *Remand not final action.* Whenever a decision of the Board includes a remand, that decision shall not be considered final for judicial review. When appropriate, upon conclusion of proceedings on remand before the examiner, the Board may enter an order otherwise making its decision final for judicial review.

(f) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

■ 16. Amend § 41.52 by revising the fourth sentence of paragraph (a)(1), revising paragraphs (a)(2) and (a)(3), and adding paragraph (a)(4) to read as follows:

**§ 41.52 Rehearing.**

(a)(1) * * * Arguments not raised, and Evidence not previously relied upon, pursuant to §§ 41.37, 41.41, or 41.47 are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) through (a)(4) of this section. * * *

(2) Appellant may present a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(3) New arguments responding to a new ground of rejection designated pursuant to § 41.50(b) are permitted.

(4) New arguments that the Board's decision contains an undesignated new ground of rejection are permitted.

* * * * *

■ 17. Revise § 41.54 to read as follows:

**§ 41.54 Action following decision.**

After decision by the Board, jurisdiction over an application or patent under *ex parte* reexamination proceeding passes to the examiner, subject to appellant's right of appeal or other review, for such further action by appellant or by the examiner, as the condition of the application or patent under *ex parte* reexamination proceeding may require, to carry into effect the decision.

Dated: November 8, 2011.

**David J. Kappos,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2011–29446 Filed 11–21–11; 8:45 am]

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