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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0003]

RIN 1904–AB92

Energy Conservation Program for Consumer Products: Test Procedures for Refrigerators, Refrigerator-Freezers, and Freezers

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

ACTION: Final rule.

SUMMARY: This rulemaking amends the interim final rule for test procedures for refrigerators, refrigerator-freezers, and freezers, issued on December 16, 2010. Specifically, it amends test procedures at subpart B, appendices A and B, by incorporating changes to the interim final rule that will apply to all measurements of energy consumption of newly manufactured products starting September 15, 2014.

These amendments modify the required test period for the second part of the test for products with cycling compressor systems and long-time automatic defrost or variable defrost control and adjust the default values of maximum and minimum compressor run time for products with variable defrost. These changes will ensure a more accurate measurement of the energy use of products with variable defrost control.

DATES: The amendments are effective February 24, 2012 and are required to establish compliance with the applicable energy conservation standards starting on September 15, 2014.

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

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2009-BT-TP-0003.*

This web page will contain a link to the docket for this rulemaking on the regulations.gov site. The regulations.gov web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 287–1317, email: *Lucas.Adin@ee.doe.gov* or Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–8145, email: *Michael.Kido@hq.doe.gov.*

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I. Background and Authority

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of title III (42 U.S.C. 6291–6309), which was subsequently redesignated as Part A for editorial reasons, establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' Refrigerators, refrigerator-freezers, and freezers (collectively referred to below as ''refrigeration products'') are all treated as ''covered products'' under this Part. (42 U.S.C. 6291(1)–(2) and 6292(a)(1)) Under the Act, this program consists essentially of three parts: (1) Testing, (2) labeling, and (3) Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to the U.S. Department of Energy (DOE) that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

By way of background, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12,

amended EPCA by including, among other things, performance standards for refrigeration products. (42 U.S.C. 6295(b)) On November 17, 1989, DOE amended these performance standards for products manufactured on or after January 1, 1993. 54 FR 47916. DOE subsequently published a correction to revise these new standards for three product classes. 55 FR 42845 (October 24, 1990). DOE again updated the performance standards for refrigeration products on April 28, 1997, for products manufactured on or after July 1, 2001. 62 FR 23102.

EISA 2007 amended EPCA by requiring DOE to publish a final rule determining whether to amend the energy conservation standards for refrigeration products manufactured starting in 2014. (42 U.S.C. 6295(b)(4)) Consistent with this requirement, DOE issued on September 18, 2008, a framework document that outlined a series of issues related to its examination of potential amendments to the standards for refrigeration products. 73 FR 54089. On September 29, 2008, DOE held a public workshop to discuss the framework document and the issues it raised. The framework document identified several test procedure issues, including: (1) Compartment temperature changes; (2) modified volume calculation methods; (3) products that deactivate energy-using features during energy testing; (4) variable anti-sweat heaters; (5) references to the updated AHAM Standard HRF–1–2008, (''HRF–1–2008''), ''Energy and Internal Volume of Refrigerating Appliances (2008),'' developed by the Association of Home Appliance Manufacturers (AHAM), including the ''Errata to Energy and Internal Volume of Refrigerating Appliances, Correction Sheet'' issued on November 17, 2009; (6) convertible compartments; and (7) harmonization with international test procedures. (''Energy Conservation Standards Rulemaking Framework Document for Residential Refrigerators, Refrigerator-Freezers, and Freezers,'' RIN 1904–AB79, Docket No. EERE–2008–BT–STD–0012). DOE conducted analyses and developed new energy conservation standards for refrigeration products that led to the eventual publication of the final rule adopting new energy conservation standards for refrigeration products manufactured starting September 15, 2014. See 76 FR 59516 (Sept. 15, 2011) (''standards final rule'') and 76 FR 70865 (Nov. 16, 2011) (date correction notice).

DOE initiated the test procedure rulemaking in part to address the issues identified in the framework document, and published a notice of proposed rulemaking on May 27, 2010, hereafter referred to as ''the NOPR.'' 75 FR 29824. In response to issue (3) above, as applied to automatic icemakers, DOE separately published a guidance document addressing various aspects related to the icemaker, including the proper manner in which to render an icemaker inoperative for the energy consumption test. *See* 75 FR 2122 (Jan. 14, 2010). DOE held a public meeting to discuss the NOPR proposals on June 22, 2010 and subsequently published the combined final/interim-final rule on December 16, 2010. 75 FR 78810. The final rule (or ''December 2010 final rule'') implemented test procedure amendments applicable to products manufactured before the effective date of the new energy conservation standards that DOE had been considering, and the interim final rule (or ''interim final rule'') implemented on an interim basis test procedure amendments applicable to products subject to the new energy conservation standards—*i.e.,* those products manufactured starting September 15, 2014. *Id.* DOE adopted this split approach in response to industry requests to provide an additional opportunity to comment on final aspects related to the interim final rule. *Id.* at 78845.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments. (42 U.S.C. 6293(b)(2)) When considering amending a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the * * * measured energy use * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured energy use of a covered product, DOE must also amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

With respect to today's rulemaking, DOE has determined that none of the amendments adopted in this final rule notice is likely to significantly change the measured energy use of refrigeration products when compared to the test procedure set forth in the interim final rule. In such situations, EPCA does not require a standards rulemaking to address such changes in measured energy efficiency. (42 U.S.C. 6293(e)(2)).

Today's rule also fulfills DOE's obligation to periodically review its test procedures under 42 U.S.C. 6293(b)(1)(A). DOE anticipates that its next evaluation of this test procedure will occur in a manner consistent with the timeline set out in this provision.

Refrigerators and Refrigerator-Freezers

DOE's test procedures for refrigerators and refrigerator-freezers are found at 10 CFR part 430, subpart B, appendices A1 (currently in effect) and A (required for rating of products starting September 15, 2014). DOE initially established its test procedures for refrigerators and refrigerator-freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. Industry representatives viewed these test procedures as too complex and eventually developed alternative test procedures in conjunction with AHAM that were incorporated into the 1979 version of HRF–1, ''Household Refrigerators, Combination Refrigerator-Freezers, and Household Freezers'' (HRF–1–1979). Using this industry-created test procedure, DOE revised its test procedures on August 10, 1982. 47 FR 34517. On August 31, 1989, DOE published a final rule establishing test procedures for variable defrost control (a control type in which the time interval between successive defrost cycles is determined by operating conditions indicating the need for defrost rather than by compressor run time), dual compressor refrigerator-freezers, and freezers equipped with ''quick-freeze'' (a manually-initiated feature that bypasses the thermostat and runs the compressor continuously until terminated). 54 FR 36238. DOE amended the test procedures again on March 7, 2003, by modifying the test period used for products equipped with long-time automatic defrost (a control type in which defrost cycles are separated by 14 hours or more of compressor run time) or variable defrost. 68 FR 10957. The test procedures include provisions for determining the annual energy use in

kilowatt-hours (kWh) and the accompanying annual operating costs.

DOE further amended the test procedures on December 16, 2010. 75 FR 78810. These amendments helped clarify how to test products for compliance with the applicable standards. The amendments clarified certain elements in Appendix A1 to ensure that regulated entities fully understand how to apply and implement the test procedure. These changes included clarifying how refrigeration products equipped with special compartments and/or more than one fresh food compartment or more than one freezer compartment should be tested. The amendments also accounted for the various waivers granted by DOE, specifically with regard to variable anti-sweat heater controls. The final rule also modified the regulatory definition of ''electric refrigerator-freezer'' to require that storage temperatures in the fresh food compartment be at a level that would effectively exclude coverage of combination wine storage-freezer products. See 10 CFR 430.2. The definition for ''electric refrigerator'' was also changed to clarify the characteristics that distinguish it from related products such as wine storage products. DOE is considering modifying its product definitions to address wine storage products in a separate future rulemaking.

In that same notice, DOE also established a new Appendix A, via an interim final rule. The new Appendix A included a number of comprehensive changes to help improve the measurement of energy consumption of refrigerators and refrigerator-freezers. These changes included, among other things: (1) New compartment temperatures and volume adjustment factors, (2) new methods for measuring compartment volumes, (3) a modification of the long-time automatic defrost test procedure to ensure that the test procedure measures all energy use associated with the defrost function, and (4) test procedures for products with a single compressor and multiple evaporators with separate active defrost cycles. DOE noted that the compartment temperature changes introduced by Appendix A would significantly impact the measured energy use and affect the calculated adjusted volume and energy factor (*i.e.* adjusted volume divided by energy use) values. Lastly, the interim final rule also addressed icemaking energy use by including a fixed value for manufacturers to add when calculating the energy consumption of those products equipped with an automatic icemaker. DOE may consider revising this approach once a more appropriate means of accounting for this feature's energy consumption is developed.

Freezers

DOE's test procedures for freezers are found at 10 CFR part 430, subpart B, appendices B1 (currently in effect) and B (required for the rating of products starting in 2014). DOE established its test procedures for freezers in a final rule published in the **Federal Register** on September 14, 1977. 42 FR 46140. As with DOE's test procedures for refrigerators and refrigerator-freezers, industry representatives viewed the freezer test procedures as too complex and worked with AHAM to develop alternative test procedures, which were incorporated into the 1979 version of HRF–1. DOE revised its test procedures for freezers based on this AHAM standard on August 10, 1982. 47 FR 34517. The subsequent August 31, 1989 final rule established test procedures for freezers with variable defrost control and freezers with the quick-freeze feature. 54 FR 36238. A subsequent amendment occurred to correct that rule's effective date. 54 FR 38788 (Sept. 20, 1989). The current test procedures include provisions for determining the annual energy use in kWh and annual electrical operating costs for freezers.

The December 16, 2010 notice also clarified compliance testing requirements for freezers under Appendix B1 and created a new Appendix B, the latter of which would apply in 2014. That new procedure changed a number of aspects to the procedure detailed in Appendix B1, including, among other things: (1) The freezer volume adjustment factor, (2) methods for measuring compartment volumes, and (3) the long-time automatic defrost test procedure. In addition, Appendix B also addresses icemaking energy use by implementing the same procedure as for refrigerator-freezers in which a fixed energy use value is applied when calculating the energy consumption of freezers with automatic icemakers.

Finalization of the Test Procedure Rulemaking for Products Manufactured Starting in 2014

The interim final rule established comprehensive changes to the manner in which the test procedures are conducted by creating new Appendices A and B. In addition to the changes discussed above, these appendices incorporate the recent changes made to Appendices A1 and B1. These new appendices also incorporate the modifications to Appendices A1 and B1 that were finalized and adopted on December 16, 2010.

DOE had provided an initial comment period on the interim final rule that ended on February 14, 2011. DOE subsequently reopened the comment period on September 15, 2011 (76 FR 57612) to allow further public feedback in response to the promulgation of the final energy conservation standards that were published on the same day. 76 FR 57516. DOE reopened the comment period to permit interested parties to comment on the interplay between the test procedure and the energy conservation standards in order to permit DOE to make any final changes that may be needed to the final test procedure for products that will be manufactured starting in 2014. 76 FR 57612–57613 (Sept. 15, 2011). The comment period ended on October 17, 2011.

Three stakeholders submitted comments in response to both supplemental comment periods that DOE provided for additional feedback—the Association of Home Appliance Manufacturers (AHAM), Sub Zero-Wolf, Inc. (Sub Zero), and Whirlpool Corporation (Whirlpool). Table I.1 below identifies these commenters and their affiliation. No other comments were received.

TABLE I.1—STAKEHOLDERS THAT SUBMITTED COMMENTS ON THE INTERIM FINAL RULE

Name	Acronym	Type*
Association of Home Appliance Manufacturers.	AHAM	IR
Sub Zero-Wolf, Inc	Sub Zero	M
Whirlpool Corporation.	Whirlpool	M

*IR: Industry Representative; M: Manufacturer.

DOE also considered comments related to a petition for a test procedure waiver (RF–018, Samsung) that had a direct bearing on elements of the test procedures used in Appendix A. See 76 FR 16760 (March 25, 2011).

II. Summary of the Final Rule

Today's rulemaking finalizes the test procedures that manufacturers must follow when certifying basic models as compliant with the new energy conservation standards starting in 2014. In finalizing these procedures, DOE made minor changes to the procedure laid out in the December 2010 interim final rule to account for comments from interested parties. The changes will not result in a significant change in measured energy use when compared to

the procedure detailed in the interim final rule. The December 2010 amendments for Appendices A1 and B1 are unchanged by today's rulemaking and continue to apply to products manufactured through September 14, 2014. (Those aspects of the December 2010 notice were not reopened for comment as they were not part of the interim final rule. 75 FR at 78813–78815 (Dec. 16, 2010).) In addition, other amendments made in the December 2010 final rule, including modified definitions, anti-circumvention language, applying the anti-sweat heater switch credit to energy use measurements, and rounding off energy test results also were not part of the interim final rule and were not reopened for comment. Accordingly, these aspects of the December 2010 notice remain unchanged.

Today's rulemaking makes a series of changes that include (a) modifying the default values of CT_L and CT_M, parameters, which represent the minimum and maximum compressor run time between defrosts, for products with variable defrost that do not have values for these parameters specified in their control algorithms, and (b) modifying the test period for products with cycling compressors and long-time or variable defrost to ensure the procedure accurately captures energy use associated with temperature recovery after defrost. The rulemaking also makes changes to clarify how to apply the second part of the test for products with long-time or variable defrost.

III. Discussion

The following section discusses in further detail the various issues addressed by today's rulemaking. These issues center chiefly on issues raised in commenter submissions. Section A identifies the products covered by the rule; section B specifies the compliance dates for the test procedure amendments made; section C discusses the test procedure amendments; and section D discusses stakeholder comments not associated with new amendments.

A. Products Covered by the Final Rule

Today's amendments cover those products that meet the definitions for refrigerator, refrigerator-freezer, and freezer, as codified in 10 CFR 430.2. The definitions for refrigerator and refrigerator-freezer were amended in the December 2010 final rule on December 16, 2010. 75 FR 78810, 78817.

Today's rulemaking does not change any of the definitions for refrigeration products that DOE amended as part of the December 2010 final rule. While DOE appreciates the concerns raised by commenters, these particular issues were not completely vetted through the rulemaking process. DOE may, however, revisit and more closely examine these issues as part of a future rulemaking activity. Section D.3 discusses the comments related to wine storage and wine storage combination products, including the amended definitions for refrigerator and refrigerator-freezer.

B. Compliance Dates for the Amended Test Procedures

Manufacturers will need to use new Appendices A and B to rate refrigeration products once they are required to comply with the amended energy conservation standards—*i.e.* September 15, 2014. Likewise, Appendices A and B will be mandatory for representations regarding energy use or operating cost of these products starting on that date.

C. Test Procedure Amendments Incorporated in This Final Rule

Today's rulemaking finalizes Appendices A and B, with some amendments. These amendments are described in greater detail below.

1. Default Values for CT_L and CT_M

Refrigeration products with variable defrost vary the frequency of defrost by reducing this frequency to save energy when the frost accumulation rate on the evaporator drops—such as when the number of door openings is reduced or when ambient humidity is low. Defrost frequency is characterized by the compressor run time between defrosts, CT, which is expressed in the test procedure in hours rounded to the nearest tenth of an hour. Variable defrost control algorithms vary CT as the defrost need changes. These algorithms may specify a minimum CT value (CT_L) and a maximum CT value (CT_M), consistent with the minimum and maximum defrost frequencies required for specific products to provide reliable defrost performance while minimizing energy use. The DOE test procedure calculates the energy use of variable defrost products using a weighted average of the algorithm's CT_L and CT_M. *See* 75 FR at 78857, 78865 (Dec. 16, 2010) (detailing requirements of section 5.2.1.3 of new Appendix A and existing Appendix A1, respectively). To address those products that may have control algorithms that do not use specific maximum and minimum values for the compressor run time between defrost cycles, the test procedure specifies a CT_L value of 12 hours and a CT_M value of 84 hours. *See id.* These values remained the same for both Appendix A1 (final rule) and Appendix A (interim final rule).

AHAM argued that the default CT_L and CT_M values for the variable defrost control algorithm should be changed to 6 and 96 hours in order to maintain consistency with HRF–1–2008. (AHAM, No. 39 at p. 5) AHAM did not provide any supporting data to show that these values would be more representative of the operation of refrigeration products with variable defrost control algorithms without specific CT values, nor did it provide any justification for the change other than to maintain consistency with HRF–1–2008.

In light of AHAM's comments, DOE reviewed the certification data submitted by refrigeration product manufacturers in August 2011 and specifically examined the submissions of those products with variable defrost to determine the prevalence of different values for CT_L and CT_M. DOE also investigated whether the certification data showed any evidence of products without specified CT values, since these would be the products whose energy use measurement would be affected by the change suggested by AHAM. Of 2,674 records in the database, 1,397 products were identified as having variable defrost. None of the records for these products included undeclared values for CT_L and CT_M. Table III.1 below shows the default CT_L and CT_M values of the current test procedure and of HRF–1–2008. It also shows the average, mean, and most prevalent values for CT_L and CT_M gleaned from available certification records. For each of these CT_L and CT_M combinations, the calculated CT value is also presented. The summary table shows that neither the 12 and 84 default values nor the AHAM-suggested values of 6 and 96 provide an exact representation of the products in the database. However, the data below also suggest that using 6 and 96 as default values more closely approximates the recorded values of those refrigeration products from the database than 12 and 84.

TABLE III.1—VALUES OF CT_L, CT_M AND CT

	CT_L	CT_M	CT
Current DOE Test Procedure Default	12.0	84.0	38.2
HRF–1–2008 Default	6.0	96.0	24.0
Database Average	8.0	82.3	*28.8
Database Median	8.0	96.0	30.0
Database Most Prevalent Values	8.0	96.0	30.0

*This is the CT calculated using the average CT_M and CT_L values. The average of the CT values calculated individually for each database record is 28.2.

Further, the use of the default CT_L and CT_M values is prescribed for those products that do not have specific values for these parameters in the product's control algorithm. Since the algorithm for such a product presumably does not explicitly set a minimum value for this time period, it is conceivable that the compressor run time between defrosts could at times be lower than the 6 hours specified in the test procedure as a minimum for CT_L (see section 5.2.1.3 of Appendix A1 or A). When operating in this mode, such a product would be using more energy for defrost than would a product with an algorithm-defined CT_L of 6 hours, due to the higher defrost frequency. Hence, DOE concludes that to ensure that the test procedure provides a conservative estimate of energy use associated with defrost (*i.e.* at least as high as the actual energy use), it is reasonable to require use of a lower default CT_L value when calculating energy use for products that do not have algorithm-specified CT_L values. For this reason, because the HRF–1–2008 default values are more representative of the refrigeration products in the database than the current default values, and in order to maintain consistency with this industry standard, DOE is changing the default values to 6 and 96 in this final rule. This change is being made for refrigerators, refrigerator-freezers, and freezers in both Appendices A and B.

2. Modification of Long-Time and Variable Defrost Test Method To Fully Capture Energy Use for Temperature Recovery

Background

The interim final rule amended the test procedure for products with long-time and variable defrost by modifying the second part of the test to better capture energy use associated with precooling and temperature recovery. 75 FR 78810, 78832–78836 (Dec. 16, 2010). A test procedure waiver petition submitted by Samsung (see 76 FR 17670 (March 25, 2011)) has raised the question of whether DOE should consider further changes to the second part of the test procedure for these products.

As described in DOE's December 2010 notice, precooling involves cooling the compartment(s) of a refrigerator-freezer to temperatures significantly lower than the user-selected temperature settings prior to an automatic defrost cycle. *Id.* at 78832. The document also noted that the two-part test served as a means to reduce the burden on testing long-time and variable defrost products. *Id.* These products initiate defrost cycles after significantly longer periods of compressor run time than conventional automatic defrost products. Long-time defrost products initiate defrost after more than 14 hours of compressor run time, and variable defrost products adjust defrost frequency based on whether defrost is needed, potentially delaying the next defrost up to 96 hours of compressor run time. The second part of the test measures the energy use consumed during a defrost cycle.

The two-part test and procedures for the second part of the test were initially established in 1982. 47 FR 34521–34522 (Aug. 10, 1982). Since that time, more sophisticated controls have replaced the mechanical defrost timers that were generally used. 68 FR 10958 (March 7, 2003). Consequently, the initial procedures for the second part of the test did not fully capture or consider the high level of sophistication that is now possible and made available with the use of modern electronic control systems. The defrost controls in use when the second part of the test was first established consisted of a mechanical defrost timer energized to advance when the compressor is energized. The initial two-part test specified that the second part starts when the heater energizes, which is coincident with the time the compressor turns off in a product using a mechanical timer control. 68 FR 10957–10958 (March 7, 2003). The first adjustment of the test procedure considering the potential for more sophisticated control was made on March 7, 2003. This amendment of the test procedure revised the second part of the test to allow it to start when the compressor turns off prior to activation of the defrost heater, which is typical of an approach enabled by more sophisticated electronic controls. *Id.*

The interim final rule made additional amendments to the second part of the test to address precooling, another defrost control feature requiring more sophisticated control than a mechanical timer. 75 FR 78832–78836 (Dec. 16, 2010). The amendments also addressed partial temperature recovery, which refers to a case in which the compartment temperatures of a refrigerator partially recover, but do not reach, their steady-state operating temperatures. For the purposes of testing, a product is considered to reach a state of partial temperature recovery when compartment temperatures do not reach the steady-state operating temperature by the end of the second part of the test (as previously specified in the test procedure) after the rise in compartment temperature associated with defrost. The amendments require, for a system with a cycling compressor, that the average compartment temperatures for the compressor cycles occurring immediately before and after the test period for the second part of the test be within 0.5 °F of the compartment temperature measured for the first part of the test. Under the interim final rule's procedure, the modified test period would start at the end of a compressor ''on'' cycle and end at the start of a compressor ''on'' cycle. *Id.* at 73885

Additional Issue Identified During Review of Samsung Waiver

After publication of the interim final rule, an additional issue associated with the two-part test was raised during the agency's review of a test procedure waiver petition submitted by Samsung Electronics America, Inc. (Samsung). That petition sought a waiver from the current test requirements for the company's products that use dual evaporators. 76 FR 16760 (March 25, 2011).[1] These products use a variable

[1] The evaporator is the component of a refrigeration system that cools the cabinet air. Most conventional refrigerators use a single evaporator

Continued

defrost strategy that employs multiple defrost cycle types, which the interim final rule's procedure addresses for products starting in 2014. 75 FR at 78836–78838 (Dec. 16, 2010). DOE explained in the December 2010 notice that Appendices A1 and B1 do not address such products and manufacturers seeking to certify these types of products as compliant prior to 2014 must first obtain a test procedure waiver to enable them to test these products. *Id.* at 78838. Samsung sought a waiver to permit the company to use the Appendix A procedures for products with multiple defrost cycle types when rating current products. 76 FR at 16763 (March 25, 2011).

Whirlpool commented in response to Samsung's waiver petition that applying the second part of the test to the fresh food defrost of one of these products results in an energy credit. (Whirlpool, Samsung Petition for Test Procedure Waiver, Case No. RF–018, Docket No. EERE–2011–BT–WAV–0017, No. 4 at p. 3) [2] Whirlpool's waiver comments discuss the data from testing performed by the Canadian Standards Association that examined the energy consumption of a Samsung model that uses multiple defrost cycles—Samsung model No. RFG297AAPN. Whirlpool asserts that the test results are illogical because the energy use contribution of the fresh food compartment defrost is negative (*i.e.* an energy credit), and adds that the energy use contribution of the freezer compartment defrost is underestimated. (*Id.* at p. 4) Whirlpool recommended that the test period for the second (defrost) part of the test for the fresh food defrost should end at the end of the second compressor ''on'' cycle after defrost, and that such a change to the test procedure only for the fresh food defrost would increase the measured energy use of the product by 1.6 percent. (Id. at pp. 5–6)

Samsung's response to Whirlpool's comment pointed out that the potential energy credit issue had been raised by DOE in its test procedure NOPR public meeting on June 22, 2010. (Samsung, Samsung Petition for Test Procedure Waiver, Case No. RF–018, Docket No. EERE–2011–BT–WAV–0017, No. 5 at p. 2) In its view, this issue had been presented by DOE for discussion and consideration by all interested parties—including Whirlpool. The company pointed out that the test procedure DOE ultimately selected had received the support of Whirlpool. *Id.* See also Whirlpool, No. 13 at p. 6.

DOE's Previous Discussion Regarding the Appropriate End of the Test Period

As indicated by Samsung, DOE raised this issue of Appendix A1's potential inability to capture all energy usage during defrost cycles when using the second (defrost) part of the test. (NOPR Public Meeting Presentation, No. 9 at p. 53) DOE recognized this possibility during its evaluation of the energy use associated with the fresh food compartment defrost of a Samsung product similar to the products addressed in the company's test procedure waiver request. That evaluation indicated that the calculated energy use contribution from the fresh food defrost was often negative, which resulted in an energy use ''credit''. DOE evaluated alternative test periods and concluded that more reasonable results are obtained when the test period ends at the end of a compressor cycle after the defrost cycle. (*Id.*) DOE sought comment during its public meeting to seek additional information on the issues associated with the long-time defrost test method that were presented. (*Id.* at p. 55)

DOE's presentation also indicated that it projected that the impact on measured energy use of the test procedure change would be an increase of approximately 3 percent, if applied to both defrosts of the Samsung product that was the focus of the discussion. (*Id.* at p. 53) This 3 percent impact was determined based on moving the end of the test period for the second part of the test from the second compressor start after defrost to the second compressor stop. DOE again reviewed the same data and concluded that the test procedure change associated with this final rule would reduce this measured energy use differential by half (*i.e.* 1.5 percent). (''Summary of Energy Use Measurements for a Refrigerator-Freezer with two Defrost Cycle Types'', No. 46) The interim final rule test procedure applied to this product does not allow the second part of the test to end at the second compressor start after defrost, due to the requirement that the average temperature for the compressor cycle immediately following the test period be within 0.5 °F of the average temperature measured for the first part of the test. (*See* Appendix A, section 4.2.1.1) Hence, the impact on energy use measurement associated with test procedure changes to address the observed negative energy use measurement associated with fresh-food-only defrost cycles depends on details of the compared test periods.

Stakeholders generally supported the test procedure approach as proposed in the Notice of Proposed Rulemaking (NOPR)—and as adopted in the interim final rule—and none suggested that the test period of the second part of the test should be changed to address the anomaly presented, *i.e.* that measurements for a specific product showed a negative energy use contribution associated with the fresh food defrost. Hence, DOE concluded that the anomaly was associated with an insignificant number of products and thus not generally significant to the test procedure for products tested using the two-part test. Consequently, in the interim final rule, DOE did not amend the end of the test period for the second part of the test to coincide with the end of a compressor ''on'' cycle (rather than the start of that cycle).

Comment Submitted in Response to the Reopening of the Comment Period

After considering Whirlpool's waiver petition comments suggesting that DOE modify the second part of the test, DOE specifically requested comment on this topic when it reopened the interim final rule comment period. 76 FR 57613–57614 (Sept. 15, 2011). DOE received one comment on this topic, from Whirlpool, which suggested that the end of the second part of the test be moved so that it coincides with the end of a compressor ''on'' cycle. (Whirlpool, No. 44 at pp. 1–2) Whirlpool asserted that this change should be made for all defrosts, whether they are for fresh food compartments or freezer compartments.

Whirlpool indicated that, for at least one product, the impact of this test procedure change on the measured energy use for a product having a separate defrost for the fresh food compartment would be an increase of approximately 3 percent. Although Whirlpool did not identify the manufacturer of that product, it mentioned that its concerns are an extension of those concerns it raised earlier in response to a waiver request made by a competitor—*i.e.* Samsung. The 3 percent impact cited by Whirlpool matches the CSA data presented in Whirlpool's comments regarding the Samsung waiver petition: the waiver comments indicate that the tested product's energy use increases from 572.5 kWh to 592.1 kWh per year (an increase of 3.4 percent) with the modified test procedure, *i.e.* when ending the second part of the test at the

that cools the freezer compartment, transferring cold freezer air to the fresh food compartment to cool the latter compartment. Samsung's dual evaporator approach uses separate evaporators in the freezer and fresh food compartments and does not exchange air between the compartments.

[2] The Samsung waiver docket items have been consolidated and loaded into the docket for this refrigerator test procedure rulemaking, see ''Documents Related to Samsung Waiver—Case No. RF–018, Docket No. EERE–2011–BT–WAV–0017'', No. 45.

end rather than the start of the second compressor ''on'' cycle after the defrost. (Whirlpool, Samsung Petition for Test Procedure Waiver, Case No. RF–018, Docket No. EERE–2011–BT–WAV–0017, No. 4 at p. 5) This projected impact on the measured energy use is consistent with DOE's own conclusions regarding Samsung products with multiple defrosts. *See* NOPR Public Meeting Presentation, No. 9 at p. 53. However, as discussed above, it overestimates the measurement impact associated with the amendments made in this final rule.

Assessment of the Suggested Test Period Modification

Whirlpool's interim final rule comments provided little or no explanation of how and why the suggested test period will result in more accurate test results. Instead, the comments indicate that the ''underlying principle when measuring the energy consumption of any product which operates in cycles is to measure from the same point in one cycle to the same point in a successor cycle,'' and assert that the test procedure of Appendix A measures from a compressor stop to a compressor start for products with cycling compressors. However, Whirlpool did not provide any explanation supporting the concept of measuring from a point in one cycle to the same point in a successor cycle. (Whirlpool, No. 44 at pp. 1–2) Nevertheless, Whirlpool's waiver comments note the unintended consequences associated with the negative energy use contribution measured for the fresh food defrost of the Samsung product when using the interim final rule's version of the Appendix A test period as demonstrating that the test period contained in the interim final rule is inappropriate. (Whirlpool, Samsung Petition for Test Procedure Waiver, Case No. RF–018, Docket No. EERE–2011–BT–WAV–0017, No. 4 at p. 5)

DOE had provided data in its NOPR public meeting presentation supporting the use of the modified test period, ending when the compressor stops. This situation was illustrated both for the fresh food defrost contribution alone and for the total defrost energy use contribution, including both fresh food and freezer compartment defrosts. The data showed that a test period that both starts and ends when the compressor stops matched the energy expended by the defrost heater during a fresh food defrost—and provided a closer match of energy use measured from one initiation of the combined defrost cycle (the defrost cycle involving both the fresh food and freezer compartments) to the next initiation of the combined defrost cycle than the Appendix A1 procedure. (NOPR Public Meeting Presentation, No. 9 at p. 53) More recently, DOE prepared an assessment demonstrating that a test period for the second part of the test both starting and ending at the end of a compressor ''on'' cycle is consistent with the full-cycle measurement specified for testing non-variable automatic defrost products. *See* (''Refrigerator Test Procedure: Adjustments to Second Part of Test'', No. 47) This document shows mathematically that a calculation of energy use using the ''section 4.2'' test period (''full test period'') matches the two-part calculation only when the second part of the test ends at the end of a compressor ''on'' cycle.

Part of the justification for modifying the test procedure in the manner suggested by Whirlpool is based on the observation that when using the test period prescribed by the interim final rule, the average compartment temperature would be warmer at the end of the test period than at its start for a system with a cycling compressor. The interim final rule test procedure includes a provision to verify that the product does not employ partial recovery. Using this provision requires examining the full compressor cycle immediately after the test period to ensure that it is a regular compressor cycle, *i.e.* a compressor cycle associated with steady state operation. However, the test does not account for the additional temperature recovery associated with a regular compressor ''on'' cycle. The December 2010 notice indicates that the test period T2 starts when the compartment is at its typical minimum temperature associated with steady state cycling operation. This minimum temperature is represented by the lower horizontal line of the temperature plot in Figure 1 of Appendix A. 75 FR at 78855 (Dec. 16, 2010) (*see* temperature plot of Figure 1, ''Long-time Automatic Defrost Diagram for Cycling Compressors'').

On the other hand, the compartment temperature is at its typical steady-state cycling maximum (the higher horizontal line of the temperature plot) when test period T2 ends. Hence, while the compartment temperature has recovered to the range within which it varies during steady state operation, it has not recovered to the temperature state associated with the start of the test period—*i.e.* the temperature is warmer than at the start of the test period. In order to allow recovery to the start-of-test-period temperature, the test period would have to continue till the end of the compressor ''on'' cycle. These arguments illustrate that the test period prescribed by the interim final rule for the second part of the test is unlikely to fully account for energy use associated with temperature recovery.

DOE concludes that the test period for the second part of the test that is specified in the interim final rule for products with cycling compressors and long-time or variable defrost may not accurately represent energy use associated with defrost, which necessitates a change to enhance the accuracy of the measurement. DOE received no other comments on this topic. Hence, in light of this new information, and its own review, DOE is adopting the approach suggested by Whirlpool to help ensure the procedure in Appendix A provides a greater level of accuracy.

Four-Hour Time Limit

DOE also considered whether to retain the four-hour time limit that the current test imposes on the second part of the test. This limit applies to the elapsed time after the defrost heater is energized.[3] (See Appendix A section 4.2.1.1 or Figure 1) The four-hour limit terminates the test period when recovery from defrost and return to steady-state cycling operation takes an unusually long time. During its review of the test period for the second part of the test, DOE noticed that for some products, the extension of the test period associated with the test period revision recommended by Whirlpool led to a test period invoking the four-hour limit (*i.e.* the desired end of the test period was more than four hours later than activation of the defrost heater).

DOE notes that modern data collection is performed almost exclusively using automated data acquisition systems. This approach to recording data significantly reduces the test burden that could potentially be associated with extending the test beyond the four-hour limit, allowing a product to fully complete its temperature recovery after defrost during testing. Test technicians do not need to observe product behavior during the test from minute to minute to ensure that data are recorded. Instead, technicians are more likely to periodically check the status of a given test once or twice a day to determine whether a defrost has occurred and whether the test period has been completed. With modern variable-defrost products, a full refrigerator test

[3] Note that the elapsed time after the defrost heater is energized is not the same as T2, since the test period generally starts prior to activation of the heater for testing in accordance with Appendix A.

can take a week to complete because of the duration of the time intervals between defrosts. The compressor run time between defrosts can last as long as 96 hours for variable defrost products (see Appendix A, section 5.2.1.3 regarding the maximum allowable duration for CT_M, the maximum compressor run time between defrosts). At a typical compressor on-time of 50 percent, the time involved in waiting for a defrost cycle can be days. With the use of automated data acquisition equipment by test labs necessitating only periodic status checks, the need for 24-hour staffing for data recording has been effectively eliminated.[4]

Further, the continued application of the four-hour limit is likely to reduce measurement accuracy, since the limit could cause a significant portion of the compressor ''on'' cycle to be dropped from the measurement.[5] In light of the more advanced capabilities of testing labs and the operation of modern refrigeration products, DOE believes that the four-hour time limit of the second part of the test is obsolete as a means to limit test burden and may in fact prevent the accurate measurement of energy consumption of these products. Because of the impact of the four-hour time limit on test measurement accuracy, and because it is no longer needed to reduce test burden, DOE is eliminating this provision of the test procedure for Appendices A and B in this notice. Making this change will also fully address the potential problem identified by Whirlpool by eliminating any incentives by some manufacturers to exploit potential limitations presented by a procedure that artificially limits the overall testing duration without fully capturing that product's energy consumption.

Recovery for Both Compartments of a Refrigerator or Refrigerator-Freezer

The interim final rule requirements for confirming that the second part of the test does not include events associated with precooling and temperature recovery provide a means to compare the temperatures of ''the compartment'' measured during the first part of the test with the average temperatures of ''the compartment'' for compressor cycles preceding and following the second part of the test. (*See* Appendix A, section 4.2.1.1) The language does not specify which compartment must be evaluated in this fashion. In order to assure that the test procedure properly accounts for energy use associated with precooling and temperature recovery of the entire product, the language of section 4 of Appendix A is modified to clarify that these requirements apply to both compartments (*i.e.* the freezer compartment and the fresh food compartment), regardless of which compartment's evaporator undergoes defrost. DOE is making this clarification to assure testing accuracy.

Modification of Figure 2 of Appendices A and B

The interim final rule includes a figure for both Appendices A and B that illustrates the second part of the test for products with non-cycling compressors. That figure, Figure 2, includes two horizontal lines in the temperature plot that have no meaning. In this final rule, these lines of Figure 2 have been removed. DOE is making this change to avoid confusion and to ensure the accuracy of the measured test results. This amendment represents no change to the specified test procedure.

Addition of Minor Edits for Clarification

While reviewing the modified new sections 4.2.1.1 and 4.2.1.2 incorporating the changes discussed above, DOE concluded that some minor adjustments to the language would be needed to clarify the test procedure and to ensure the overall consistency of the procedure. These adjustments include the following:

- In the first and second lines of both sections, changing ''* * * the second part starts * * *'' to ''* * * the second part of the test starts * * *''.
- In section 4.2.1.1, changing ''* * * first part's temperature * * *'' to ''* * * average temperature for the first part of the test * * *''

These changes are made in parallel sections to both Appendices A and B.

Impact of the Test Procedure Change on Measured Energy Use

Whirlpool estimated that modifying the test procedure to address the observed negative energy use associated with fresh food compartment defrosts would increase the measured energy use of a tested competitor's product by 3 percent. (Whirlpool, No. 44 at p. 2) These results are consistent with the results DOE observed, as reported in the NOPR public meeting. (NOPR Public Meeting Presentation, No. 9 at p. 53). However, as discussed above, DOE has re-examined the available data and now projects that the increase in energy use for such a product is only 1.5 percent applying the amended procedure made in this final rule. This latter estimate more accurately reflects the differences in the test period of the second part of the tests as represented by the interim final rule and today's final rule. (''Summary of Energy Use Measurements for a Refrigerator-Freezer with two Defrost Cycle Types'', No. 46) In addition, as discussed further below, DOE has determined that the impact of the test procedure change on energy use measurement for most affected products is near 1 percent. DOE also notes that the energy use impact of this change would apply only for those variable defrost products that use cycling compressors.

To assess the potential impact on the measured energy use associated with the test procedure change suggested by Whirlpool, DOE reviewed the data it collected to support the test procedure's development and data collected as part of its compliance efforts. The analysis DOE conducted drew from two separate sets of test reports. The first set included tests conducted using the current test procedures of Appendix A1. For this set of tests, the applicable temperature settings did not permit one to calculate a weighted-average energy use at the Appendix A standardized compartment temperatures of 0 °F for the freezer compartment, and 39 °F for the fresh food compartment, because the measured compartment temperatures for the two tests conducted at different temperature control settings (*i.e.* median setting and either warmest or coldest settings prescribed in the temperature control setting requirements of Appendix A1, section 3) did not generally bound these standardized temperatures. The second set of tests, in contrast, included measurements at temperature settings allowing calculation of results consistent with the Appendix A standardized compartment temperatures. These tests involved the use of temperature control settings suitable for the Appendix A standardized temperatures.

For the first set of tests, DOE evaluated the impact of the test procedure change only for the coldest compartment temperature setting used in the test, which was typically the median setting. The compartment temperatures of these tests fell within 3°F of the Appendix A standardized temperatures. While this difference represents a deviation from the Appendix A test requirements, DOE still considers these results to be a good predictor of the expected operation of

[4] Personal communication, Detlef Westphalen of Navigant Consulting, Inc. with Terry Drew, CSA International, 12/5/11.

[5] For example, suppose the test period criteria for temperature recovery are met at the end of the third compressor ''on'' cycle after the defrost, but the four hour limit ends the test period just after the start of the third compressor ''on'' cycle. In this case, a significant portion of compressor energy use is eliminated from the measurement for the second part of the test.

these products under standardized compartment temperature conditions for two reasons—(1) the small size of the temperature deviations and (2) the measured data demonstrate that the influence of compartment temperature on the estimated impact of the test procedure change was negligible.

The analysis focused on four key refrigerator-freezer product classes: class 3 (refrigerator-freezers—automatic defrost with top-mounted freezer without through-the-door ice service), class 5 products without exception relief (refrigerator-freezers—automatic defrost with bottom-mounted freezer without through-the-door ice service), class 5 with exception relief to account for through-the-door ice service (for the purposes of this discussion, designated product class 5A under the recently promulgated standards for 2014), and class 7 (refrigerator-freezers—automatic defrost with side-mounted freezer with through-the-door ice service). These product classes were chosen because they represent significant market share, have automatic defrost, and are the most likely products to have variable defrost, thus indicating that they would be more likely candidates to be tested using the two-part test. The assessment focused solely on products with cycling compressors and variable defrost, since the test procedure change does not affect energy use measurement for other products.

DOE re-evaluated the test results for both sets of data using the modified test period for the second part of the test as described in this section, including both shifting the end of the test period to a compressor stop (rather than a compressor start) and removing the four-hour time limit. Table III.2 summarizes the results of this assessment for both sets of data and does not include any data covering Samsung products. The average measurement impact for these 25 products is under 1 percent.

TABLE III.2—MEASURED ENERGY USE INCREASE

Product class	First set of tests		Second set of tests	
	Number of units	Average energy use impact (percent)	Number of units	Average energy use impact (percent)
3	6	0.99	2	0.90
5	2	1.05	1	0.89
5A	3	1.08	2	1.21
7	6	0.73	3	0.85
All Units	17	0.92	8	0.95

DOE also separately evaluated data for six Samsung products falling into classes 5A and 7, for which the overall average measured impact was 1.55 percent. DOE believes that the reason for the greater sensitivity of Samsung products to this test procedure change as compared with other products is that these products have two defrosts (one combined defrost of both the freezer and fresh food compartment evaporators and one defrost of only the fresh food evaporator) occurring in the same amount of time that other products use one defrost.

Shipment-Weighted Impact of the Test Procedure Change on Measured Energy Use

DOE developed estimates of shipment-weighted impacts on the measured energy use of the test procedure change for the four product classes highlighted in Table III.2. The test procedure amendments apply only to variable defrost products with cycling compressors. Table III.3 summarizes the percentage of models with variable defrost for the evaluated refrigerator-freezer product classes as reported to DOE in August 2011 as part of the annual certification data submission. DOE used these percentages of basic models as a proxy for shipment-weighted average percentages. Because the certification data do not distinguish between cycling and non-cycling compressor systems, these percentages include both types and for that reason provide a conservative (*i.e.* larger) estimate regarding the market share of affected products. (As discussed above, only products with variable defrost and cycling compressors will be affected by the test procedure change.) The table also shows the market share of Samsung products by product class based on sales data purchased from the NPD Group[6] for the years 2007 and 2008. DOE calculated the shipment-weighted average impact of the test procedure change as follows.

$$Percent\ Change = 1.55 \times S_S + 1.00 \times (S_V - S_S) + 0.00 \times (1 - S_V)$$

In this equation, S_S is the Samsung market share and S_V is the variable defrost market share. DOE assumed that the Samsung products all have variable defrost. Table III.3 shows the results of this calculation of weighted average energy use impact for the four product classes. The percentage impact varies from less than 0.5 percent to just above 1 percent. From these projections, DOE concludes that the level of change in the measurement does not necessitate a change in the energy conservation standards, as discussed in section III.E.2.

[6] NPD Group, Inc. *http://www.npd.com/corpServlet?nextpage=corp_welcome.html.*

TABLE III.3—WEIGHTED IMPACT

Product class	Percent of basic models with variable defrost	Percent Samsung products	Weighted average energy use impact
3	36	0	0.36
5	90	18	1.00
5A	100	24	1.13
7	95	6	0.98

D. Other Issues

This section discusses comments made by stakeholders regarding items for which DOE has not made corresponding changes in the test procedure.

1. Anti-Circumvention Language

In the December 2010 final rule, DOE added anti-circumvention language to 10 CFR 430.23, in section (a)(10) addressing refrigerators and refrigerator-freezers and in section (b)(7) addressing freezers. 75 FR 78818–78820 (Dec. 16, 2010). AHAM commented that the anti-circumvention language has significant differences as compared with the language of HRF–1–2008 and that the exact language of HRF–1–2008 should be adopted. (AHAM, No. 39 at p. 4) The language identified by AHAM appears in a section that provides general guidance for manufacturers to consider with respect to potential anti-circumvention issues. The specific language changes AHAM recommended include the following:

1. ''Energy saving features that are designed to be activated by a lack of door openings shall not be functional during the energy test.'' should read ''Energy saving features that are designed to operate when there are no door openings for long periods of time shall not be functional during the energy test.''

2. ''The defrost heater should not either function or turn off differently during the energy test than it would when operating in typical room conditions.'' should read ''The defrost heater shall not either function or turn off differently during the energy test than it would when operating in typical room conditions. Also, the product shall not recover differently during the defrost recovery period than it would in typical room conditions.''

3. In ''Electric heaters that would normally operate at typical room conditions with door openings should also operate during the energy test.'' the ''should'' should be replaced with ''shall.''

As noted earlier, amendments to 10 CFR 430.23 as part of the December 16, 2010 notice were made as part of the December 2010 final rule. These issues were not fully vetted as part of the re-opening notice, which focused on issues related to Appendices A and B. DOE notes, however, that it developed this limited guidance in reliance on the 2007 version of HRF–1. (Compare section HRF–1–2007, section 1.2 with HRF–1–2008, section 1.2). Should DOE need to clarify the application of these conditions, it may do so in the future.

2. Refrigeration Products Designed for Sale With or Without Icemakers

In the standards final rule, DOE discussed issues raised by AHAM regarding refrigeration products designed for sale with or without icemakers (''kitable models''). Such products may leave the factory with an icemaker installed, but could also leave the factory without an icemaker and instead have an icemaker installed downstream in the distribution chain, by the retailer, or even by a customer after purchase of the product. 76 FR at 57538 (Sept. 15, 2011). Icemakers can also be produced by third-party manufacturers separate from the refrigeration products' manufacturers. (For example, the third party brand Aquafresh is advertised as a replacement for all major icemaker brands. See ''Aquafresh RIM900 Ice Maker Information,'' No. 48 at p. 1) AHAM commented in response to the energy standards NOPR that kitable models should be treated as if they have the icemaker installed. (AHAM, Refrigeration Products Energy Conservation Standard Rulemaking, Docket Number EE–2008–BT–STD–0012, No. 73 at p. 6) DOE responded to these claims by noting that such products could be purchased either with or without the icemaker, that the field energy use for products without an icemaker would be less by the amount of energy use associated with icemaking (which is represented by a fixed value of 84 kWh in the interim final rule test procedure) and that better consistency with the test procedure would be established if such products were required to be certified both with and without the icemaker. 76 FR at 57538–57539 (Sept. 15, 2011).

AHAM strongly opposed the DOE approach and its comments to DOE stressed that the approach would create unnecessary burden and cost with no public benefit. AHAM cited the following reasons in support of its position:

- As far as AHAM is aware, manufacturers typically assign kitable models a single model number regardless of whether the icemaker is installed when the product leaves the factory. Requiring certification of the model with and without the icemaker might require establishing a second model number for each such product, which would represent a great cost to manufacturers.
- The approach is overly burdensome because it requires twice the test burden and twice as much reporting.
- Consumers that install an icemaker after purchase of a refrigerator would not be aware of the additional energy use associated with icemaking.
- If manufacturers maintain a single model number for the product with and without the icemaker, there might be confusion if consumers see two different energy use values indicated for the same model (*i.e.* one for the unit with the icemaker and one for the unit without the icemaker).
- The manufacturer may not have any control over whether an icemaker is installed in the unit after it leaves the factory, making it difficult to ensure that the correct energy label is included with the unit.

AHAM's approach would be to treat kitable models as if they have an icemaker. Such an approach would ensure that a purchaser of a kitable model would receive a product that would have energy use no more than the rated value. This approach would also mean that there would be only one energy use value associated with each model number, and would avoid multiple testing and reporting. (AHAM, No. 43 at pp. 6–7)

DOE is declining to adopt AHAM's approach within the context of today's notice.

DOE acknowledges, however, that manufacturers may have no control of events occurring after a product leaves their factory, and, hence, may not know which label to ship with a product, if the label were required to accurately reflect whether the product has an icemaker installed. Further, although AHAM claims that this approach is burdensome, its claim that such products would have to be tested twice is incorrect—a single test would indicate product performance with and without the icemaker, because it would include a measurement of the product without an icemaker. Calculating the energy use for an icemaker-equipped product would be a matter of adding a fixed value to calculate this value, as specified by the Appendix A test procedure (see section 6.2.2.2). Additionally, AHAM did not quantify the burden involved. Without such quantification, or a meaningful explanation as to why a second set of tests would be needed, DOE has little information with which to judge the merits of AHAM's recommendations or its claims. DOE also notes that product labeling is the jurisdiction of the FTC and that any contents of those labels lie primarily within the province of that agency's rulemaking authority.

Further, DOE notes that any approach eventually adopted for kitable models must ensure that both versions of the kitable model (*i.e.* sold either with or without the icemaker) meet their respective energy standards. DOE notes that this goal would automatically be achieved with the new standards and the new test procedures as represented by the September 2011 standards final rule and this test procedure final rule notice, since both the test procedure and the standards apply a fixed value of 84 kWh (to represent icemaker energy consumption) to the measured energy use of a product when configured without an icemaker—this new value represents the energy use of an icemaker-equipped version of that product. This situation will likely change once a laboratory-based procedure is implemented for measuring icemaking energy use, as is contemplated in a future rulemaking. Consideration of an approach to address kitable models would, in all likelihood, be more appropriately addressed as part of a future rulemaking to decide whether to incorporate such a laboratory-based icemaking energy use measurement. DOE adds that the full rulemaking process would allow the issues associated with kitable models to be thoroughly considered and reviewed by stakeholders, thus ensuring that the adopted approach is vetted and acceptable to all affected parties. Accordingly, DOE is declining to adopt AHAM's suggestion.

3. Wine Storage and Combination Wine Storage Products

This section addresses issues associated with wine storage products and combination wine storage products. The latter are refrigeration products combining wine storage with fresh food and/or freezer compartments.

Definitions for Refrigerator and Refrigerator-Freezer

DOE amended the definitions for refrigerator and refrigerator-freezer as part of the final rule published in the December 16, 2010 notice. *See* 75 FR at 78817. The modified definitions did two things that the previous definitions did not. First, they clarified that products that combine freezer compartments with compartments not designed to be capable of 39 °F storage temperature (but include no other types of compartments) are not refrigerator-freezers. Second, the definitions clarified the requirements for fresh food compartments of refrigerators and refrigerator-freezers. Regarding this second item, the revised definitions clarified that a product is not necessarily disqualified from status as a refrigerator or refrigerator-freezer if its fresh food compartments can maintain average temperatures above 39 °F for some temperature control settings. *Id.*

The amendments did not include language specifying that products incorporating wine storage compartments—for the purpose of this discussion, compartments that are not designed to be capable of maintaining storage temperatures below 39 °F—in products that would otherwise be refrigerators or refrigerator-freezers under the definition would be treated as something other than these covered products. *Id.* at 78817. Wine chillers are typically designed to operate between 50 °F and 60 °F to ensure the proper storage temperature for bottled wine. DOE subsequently posted on its Web site a guidance document explaining its interpretation of the amended definitions. (''Guidance on Scope of Coverage for Hybrid (Wine Storage) Refrigeration Products Issued Feb. 10, 2011'', No. 49). The Guidance clarified DOE's interpretation of the definitions and explained that adding a wine storage compartment to a refrigerator or a refrigerator-freezer does not change its status as a refrigerator or refrigerator-freezer under the regulations.

AHAM objected to this interpretation of the test procedure final rule definitions. (AHAM, No. 43 at pp. 4–5). It argued that DOE's interpretation is inequitable because it treats freezers differently than refrigerators and refrigerator-freezers. AHAM also argued that the Guidance was, in its view, inconsistent with the separate rulemaking approach that DOE had indicated it was considering applying to wine chillers. AHAM argued further that establishing coverage through interpretation, which it believed was performed by the Guidance, was inappropriate, and stated that such steps should be taken only through the established rulemaking process.

At the outset, DOE notes that these definitions were established as part of the December 2010 final rule. Because of the limited nature of the re-opening of the comment period, which focused on those issues related to the conduct of the test procedures detailed in Appendices A and B, these particular issues were not completely vetted through the rulemaking process. Hence, DOE may revisit and reconsider these issues as part of a future rulemaking activity.

DOE further notes that AHAM does not contest the validity of the text of the definitions themselves but only how DOE may choose to apply these definitions to a small group of products that have yet to comprise any significant share of the overall refrigeration product market. DOE's research was able to identify only seven distinct products that are clearly part of this product group. (''Wine Storage Combination Products'', No. 50).

With respect to the definitions, the coverage of refrigeration products has been clarified through guidance to help explain that products that meet a specific set of performance criteria would be treated as covered products. Any product meeting these criteria are subject to the regulations covering these products. These criteria were established through a lengthy notice and comment process associated with this test procedure rulemaking that began in May 2010 and on which manufacturers had ample opportunity to comment. DOE adds that, consistent with its prior statements, it fully intends to initiate a wine-chiller-specific rulemaking to address potential standards for these products.

DOE also notes that there are some key technical differences between freezers and refrigerators/refrigerator-freezers. These differences require that different approaches be considered when deciding how to treat those refrigeration products that include a wine storage compartment. In particular, the standardized temperature

for a freezer is 0 °F, while the standardized temperature for the fresh food compartment of a refrigerator-freezer is 45 °F under current test procedures and 39 °F under test procedures that manufacturers will need to use for compliance purposes in 2014. A wine storage compartment can be expected to approach a 45 °F temperature during testing, but approaching 0 °F would be extremely unlikely given the nature of the product—specifically, the technical requirements for designing a compartment of a product to achieve a 0 °F temperature differs significantly from those required to achieve the much higher temperature (39 °F) needed for the safe storage of fresh food—or the even higher standardized temperature (45 °F) required by the current test procedure during the testing of these products. These differences not only require different design considerations, but they also result in very different energy consumption characteristics.

Moreover, the definitions for these three products (refrigerator, refrigerator-freezer, and freezer), which DOE adopted with full input from the public, including manufacturers, contain clear differences with respect to the inclusion of separate compartments. Both the refrigerator and refrigerator-freezer definitions explicitly contemplate the inclusion of compartments with more than one temperature range, while the freezer definition does not. *See* 10 CFR 430.2. As a result, a freezer-wine chiller combination product does not fall squarely into any of these definitions. In contrast, a wine chiller combined with either a refrigerator or refrigerator-freezer would fall within the definitions for those two products. Treating these three products in the exact same manner as suggested by AHAM—*i.e.*, to exclude them from any coverage—would ignore these differences as well as the technical differences noted above. Accordingly, because of these differences, a freezer-wine chiller product should not be treated in the same manner as a refrigerator-wine chiller or refrigerator-freezer-wine chiller products.

DOE recognizes, however, that some combination wine storage products may have characteristics that would make attempts at testing them with the wine storage compartment approaching 45 °F provide non-representative results. For such products, manufacturers may still market such items by first petitioning DOE for an appropriate test procedure waiver. DOE highlighted this option when it issued its February 2011 Guidance. Also, in the case of those products that may be unable to comply with the applicable standards, manufacturers have the option of applying for exception relief with the Office of Hearings and Appeals. *See* 42 U.S.C. 7194 *and* 10 CFR part 1003.

Federal Energy Conservation Standards for Wine Chillers

In the energy conservation standards NOPR (''standards NOPR''), and again in the standards final rule, DOE explained its interpretation that wine chillers are not covered products under the definition for electric refrigerator, and thus are not covered by the energy conservation standards for refrigeration products. 75 FR 59470, 59486 (Sept. 27, 2010) and 76 FR 57516, 57534 (Sept. 15, 2011). As noted in the standards final rule, several stakeholders submitted comments favoring the regulation of wine chiller products. DOE noted that it may consider initiating a rulemaking to establish coverage and energy standards for these products. *Id.*

In its comments on the interim final rule, AHAM reiterated its support for a rulemaking to regulate wine storage products, and indicated that such a rulemaking should include products in which wine storage compartments are combined with fresh food and/or freezer compartments. (AHAM, No. 43 at p. 4). Sub Zero requested that DOE conduct a comprehensive analysis, with full stakeholder input, leading to a Federal efficiency standard for all wine storage products and combination/hybrid that include wine chillers. (Sub Zero, No. 42 at p. 2).

Consistent with earlier statements, DOE will consider conducting rulemakings addressing coverage, test procedures, and energy conservation standards for wine chiller and related products. DOE has already taken an initial step in this process by publishing a coverage determination proposal to establish coverage for refrigeration products that do not have compressors and condensers integrated with their cabinets—many of which include wine chillers. 76 FR 69147 (Nov. 8, 2011). Such products cannot be immediately covered under the authority granted to DOE by EPCA to regulate conventional refrigeration products, which necessitates a separate coverage determination to address these non-condenser/compressor products. (42 U.S.C. 6292(a)(1)).

4. Multiple Compressor Systems

In the test procedure NOPR, DOE proposed to address certain inconsistencies in the test procedure for dual compressor systems. 75 FR at 29841 (May 27, 2010). These systems have separate refrigeration systems serving the fresh food and freezer compartments. AHAM commented that DOE should simplify this test procedure and suggested an alternative test procedure addressing such products. (AHAM, No. 16 at p. 7). DOE explained that it could not adopt the AHAM proposal in the interim final rule because the AHAM procedure represents a significant departure from the proposal that was presented in the NOPR, and that stakeholders were not provided an adequate opportunity to comment on the procedure to allow its adoption. 75 FR at 78831 (Dec. 16, 2010). DOE noted, however, that it may consider this approach in a future rulemaking that would more fully revise the test procedure. *See id.*

AHAM raised this issue in all three of its written comments submitted in response to the interim final rule. (AHAM, No. 39 at p. 4; AHAM, No. 40 at pp. 1–2; AHAM, No. 43 at pp. 2–3). AHAM's recommendations regarding how this test procedure should measure the energy consumption of multiple compressor-based systems has changed each time it has provided specific test procedure recommendations. *See* AHAM, No. 16 at p. 7 (Aug. 10, 2010), AHAM, No. 40 at pp. 1–2 (March 4, 2011), *and* AHAM, No. 43 at pp. 2–3 (Oct. 17, 2011). In spite of its continually evolving position, AHAM urged DOE to modify the dual compressor test procedure because, in its view, the DOE test procedure contains specific problems that relate to its requirement that a manufacturer separately measure the energy use of the two separate systems.[7] The group made two assertions in support of its view. First, AHAM argued that this requirement posed a significant test burden. Second, AHAM asserted that many dual compressor products do not work in the manner that the test procedure assumes they do—*i.e.* as separate independent systems. Instead, AHAM argued that many of these products use shared systems. (AHAM, No. 40 at p. 2). Sub-Zero supported the alternative approach incorporated in AHAM's October 17, 2011 comments and asserted that it provided a practical, accurate, and repeatable test procedure that should be incorporated into the final rule.[8] (Sub Zero, No. 42 at pp. 1–2).

[7] DOE notes that the requirement for separate measurement of the two systems for dual compressor products is not new. It was initially established in the test procedure on August 31, 1989. 54 FR 36238.

[8] Sub Zero's comments mention that they have submitted a petition for a test procedure waiver to obtain relief for their dual-compressor products from use of the current test procedure (*see* 76 FR 71335 (Nov. 17, 2011)), which they claim are

AHAM added that Appendix A1 should be modified to include the revised test procedure for dual compressor system products it suggested that DOE adopt. (AHAM, No. 43 at p. 2).

DOE notes that modifications to the Appendix A1 test procedure for dual compressor systems implemented in the December 16, 2010 notice were made as part of the final rule. Because of the limited nature of the reopening notice, which focused on issues related to Appendices A and B, these suggested changes to Appendix A1 were not fully vetted for consideration in this rulemaking.

DOE further notes that the current procedure's requirement that each compressor system of a dual compressor system be separately measured was first established in 1989. *See* 54 FR 36238, 36241 (Aug. 31, 1989). Manufacturers are, by now, very familiar with this procedure and how to most efficiently and accurately perform it. The issues that AHAM initially raised in its August 10, 2010, comments regarding the burden associated with this test (which AHAM did not detail) require additional consideration and a more fulsome evaluation. Additionally, the constantly changing nature of AHAM's recommended approach highlights the unsettled nature of that approach and underscores the complexity of this issue. In DOE's view, these facts tend to indicate that the adoption of any one of AHAM's three suggested alternatives would likely be premature, particularly without further public input. Hence, DOE is declining to adopt any of AHAM's suggestions at this time.

DOE notes that AHAM did not indicate that its approach will be applicable to freezers. Consequently, DOE did not evaluate the appropriateness of this approach for those products. DOE is unaware of any freezer products that employ a dual compressor system.

5. Triangulation

During the test procedure NOPR public meeting, stakeholders introduced the concept of triangulation in the context of setting a refrigeration product's temperature controls for testing. The triangulation approach involves conducting tests at three temperature control setting combinations as opposed to the two settings generally required in the current test procedures. By properly setting the controls for the three tests and calculating the appropriate weighted average of the energy use measurements of those tests, triangulation allows one to calculate the projected level of energy use if both the fresh food and freezer compartment temperatures matched their standardized temperatures (*i.e.* 0 °F in the freezer compartment and 39 °F in the fresh food compartment for a refrigerator-freezer tested according to Appendix A). In comparison, the current DOE test procedure provides a more conservative measurement (*i.e.* potentially higher value) of energy use at the standardized temperatures that reduces the overall testing burdens by limiting the number of required tests from three under the triangulation approach to two.[9]

Stakeholders suggested in oral and written comments on the NOPR that triangulation should be introduced into the DOE test procedures. *See* 75 FR at 78822 (Dec. 16, 2010). DOE indicated in the interim final rule that this test procedure approach has not been subject to stakeholder evaluation and comment and that it could not be adopted at the time for that reason. *Id.*

AHAM commented again that triangulation should be adopted in the test procedures, indicating that it should be introduced as an optional approach for setting temperature controls for testing. AHAM also indicated that DOE could have put this topic up for stakeholder comment in the interim final rule, and added that if the DOE adopts triangulation for certification purposes, it should also be required for enforcement purposes. (AHAM, No. 39 at pp. 3–4)

DOE believes the triangulation approach departs enough from current procedures for setting temperature controls that it would have been inappropriate for DOE to incorporate it based solely on the strength of the NOPR comments, which were sparse and contained little to no supporting data. Those technical differences, coupled with the lack of any opportunity for all interested parties to fully evaluate this issue, weigh in favor of not incorporating the triangulation approach into DOE's test procedure at this time. Consequently, DOE did not adopt it in either the December 2010 final rule or the interim final rule.

Additionally, introducing triangulation could have unforeseen implications, as alluded to in AHAM's comments, which suggested that, if adopted, it should also be used for enforcement purposes. (*Id.* at p. 4) Testing using triangulation could, in certain circumstances, yield different results as compared with the approach of the current DOE test procedure. Those differences could be significant enough to affect whether a given product complies with an applicable standard. This complication alone merits a more thorough consideration by the agency before the triangulation approach is adopted. For these reasons, DOE is declining to adopt the triangulation method into the test procedures of Appendix A at this time. DOE, may, however, consider the incorporation of this method when it considers potential changes to the test procedure as periodically required under 42 U.S.C. 6293(b).

E. Compliance With Other EPCA Requirements

In addition to the issues discussed above, DOE examined its other obligations under EPCA in developing the amendments in today's notice. These requirements are addressed in greater detail below.

1. Test Burden

EPCA requires that the test procedures DOE prescribes or amends be reasonably designed to produce test results which measure the energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. These procedures must also not be unduly burdensome to conduct. See 42 U.S.C. 6293(b)(3). DOE has concluded that the amendments being adopted today satisfy this requirement. In large part, today's rule simply finalizes the interim final rule of December 16, 2010. Where the interim final rule has been modified, the amendments require no changes to the current requirements for equipment and instrumentation for testing.

While the amendments adopted today have the potential to slightly extend the testing time for some products that use long-time or variable defrost, this extended duration is likely to represent an insignificant impact on the overall test burden. In particular, while the duration of the second part of the test

difficult or impossible to conduct. (Sub Zero, No. 44 at pp. 1–2). The waiver process is the appropriate step in addressing such products that cannot properly be tested using the DOE test procedures.

[9] A more conservative (*i.e.* larger) estimate of energy usage is most likely to occur in situations where a tested product's temperature controls have not been tuned—without such tuning, the two calculations of energy use of Appendix A, section 6.2.2.2 using the fresh food compartment temperature for one calculation and the freezer compartment temperature for the other can differ significantly from each other. For such a product, the two compartments attain their standardized temperatures at very different positions within the range of their temperature controls (*e.g.* the fresh food compartment may attain 39 °F with its control at the mid setting while the freezer compartment control may have to be in its coldest position to achieve 0 °F in the compartment).

will extend for those products that use cycling compressors—the test period will be extended typically for the duration of a compressor ''on'' cycle, but may be longer in the limited number of cases where the four-hour time limit between defrost heater activation and the end of the test period under the current test procedure applies. The amended procedure will, in the vast majority of cases, not extend the testing duration for products. DOE estimates that any products that would be affected by these changes would have an extended testing duration of between 1 and 2 hours. Given that most, if not all, modern testing is conducted using automated data acquisition equipment and that these tests typically last a full week for a typical product, the addition of this amount of time is unlikely to result in any significant added burden.

As described in section C.2, in tests conducted using automated data acquisition, a test technician does not actively monitor the test minute to minute. Instead, the test status is checked periodically during the test, perhaps once or twice per day. At the time of such a check, the test generally would have completed the next defrost cycle to be measured, or alternatively, the next defrost cycle would not yet have started, in which case the test would be checked again later. In few, if any, cases would extension of the defrost part of the test by 1 or 2 hours significantly lengthen the overall test time. The extension of the test period of the second part of the test would cause delay only if, during such status check, the latest defrost cycle has started but not ended. Also, for such a case, a two-hour extension of the test, if it did occur, would represent about a 1 percent increase in test time, assuming a one-week average test duration. Consequently, DOE concludes that the possible small increase in test time is more than outweighed by the improved accuracy of the test represented by the test procedure amendment.

The test procedure changes modifying the default values for CT_L and CT_M and revising the reference to the test data records requirements impose no changes in test burden.

2. Changes in Measured Energy Use

In this final rule, DOE is amending the test period for the second part of the test. This test is conducted as part of the two-part test for products with long-time or variable-defrost and cycling compressor systems. DOE estimates that this test procedure change will increase measured energy use roughly 1 percent for affected standard-size refrigerator-freezers. The other test procedure amendments made in this final rule will not affect energy use measurement.

When DOE modifies test procedures, it must determine to what extent, if any, the new test procedure would alter the measured energy use of covered products. (42 U.S.C. 6293(e)(1)) In this case, DOE has determined that the projected impact on the measured energy use of covered products that are affected would be altered by approximately 1 percent. DOE considers this an insignificant impact on measured energy use. Accordingly, DOE has determined that an adjustment to the applicable standard is not required.

IV. Procedural Requirements

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site (*http://www.gc.doe.gov*).

DOE reviewed the test procedures in today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. This final rule prescribes test procedures that will be used to test compliance with energy conservation standards for the products that are the subject of this rulemaking.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS code 335222, which applies to Household Refrigerator and Home Freezer Manufacturing, is 1,000 employees.

DOE searched the SBA Web site (*http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm*) to identify manufacturers within this NAICS code that produce refrigerators, refrigerator-freezers, and/or freezers. Most of the manufacturers supplying these products are large multinational corporations with more than 1,000 employees. There are several small businesses involved in the sale of refrigeration products that are listed on the SBA Web site under the NAICS code for this industry. However, DOE believes that only U-Line Corporation of Milwaukee, Wisconsin is a small business that manufactures these products. U-Line primarily manufactures compact refrigerators and related compact products such as wine chillers and stand-alone icemakers—these icemakers differ from the automatic icemakers installed in many refrigeration products in that they are complete icemaking appliances designed solely for the production and storage of ice, using either typical residential icemaking technology or a reduced-scale version of the icemaking technology used extensively in commercial icemakers.

DOE had initially concluded in its December 2010 notice that the final rule will not have a significant impact on small manufacturers under the provisions of the Regulatory Flexibility Act. DOE received no comments objecting to this conclusion.

DOE concludes also that the test procedure amendments of today's notice will not have a significant impact on small manufacturers under the provisions of the Act. These amendments do not require use of test facilities or test equipment that differ in any substantive way from the test facilities or test equipment that manufacturers currently use to evaluate the energy efficiency of these products. Further, the amended test procedures will not be significantly more difficult or time-consuming to conduct than current DOE energy test procedures.

For these reasons, DOE concludes and certifies that the rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the

certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of refrigeration products must certify to DOE that their products comply with any applicable energy conservation standard. In certifying compliance, manufacturers must test their products according to the DOE test procedure for refrigeration products, including any amendments adopted for that test procedure. The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. DOE received OMB approval to collect this information and has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including the refrigeration products addressed by today's final rule. 76 FR 12422 (March 7, 2011). The public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE amends its test procedure for refrigerators, refrigerator-freezers, and freezers. These amendments will improve the ability of DOE's procedures to more accurately account for the energy consumption of products that incorporate a variety of new technologies that were not contemplated when the current procedure was promulgated. The amendments also will be used to develop and implement future energy conservation standards for refrigeration products. DOE has determined that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, appendix A6. See 76 FR 63764, 63788 (Oct. 13, 2011). The exclusion applies because this rule establishes a strictly procedural requirement by revising existing test procedures. These revisions will not affect the amount, quality, or distribution of energy usage, and, therefore, will not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (Aug. 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this final rule and determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially-affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *www.gc.doe.gov*). Today's final rule contains neither an intergovernmental mandate nor a mandate that may result

in an expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's rule under OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977 (FEAA). (15 U.S.C. 788) Section 32 essentially provides in part that, where a rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Today's action does not incorporate testing methods contained in any new commercial standards not already referenced by the current regulations on which the Attorney General and FTC have not already been previously consulted earlier during this rulemaking process.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of these final rules.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on January 9, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends part 430 of chapter II of title 10, of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Appendix A to subpart B of part 430 is amended by:
■ a. Revising section 4.2.1.1, including figure 1;
■ b. Revising section 4.2.1.2, including figure 2;
■ c. Revising 4.2.4; and
■ d. Revising sections 5.2.1.3 and 5.2.1.5.

The revisions read as follows:

Appendix A to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Electric Refrigerators and Electric Refrigerator-Freezers

* * * * *

4. Test Period

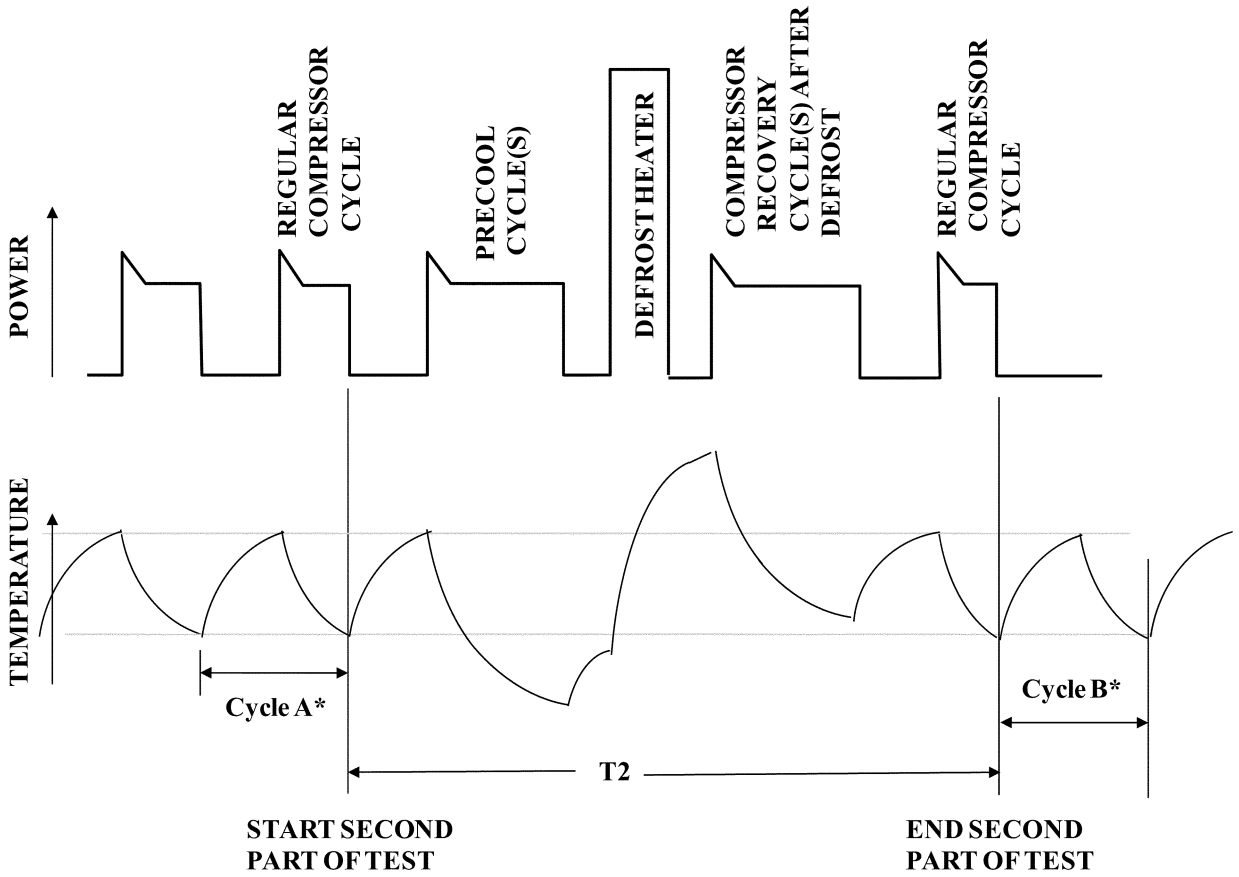
* * * * *

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperatures of the fresh food and freezer compartments measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in either compartment to deviate from its average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the temperature(s) of one or both compartments prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after both compartment temperatures have fully recovered to their stable conditions. The average temperatures of the compartments

measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must both be within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors

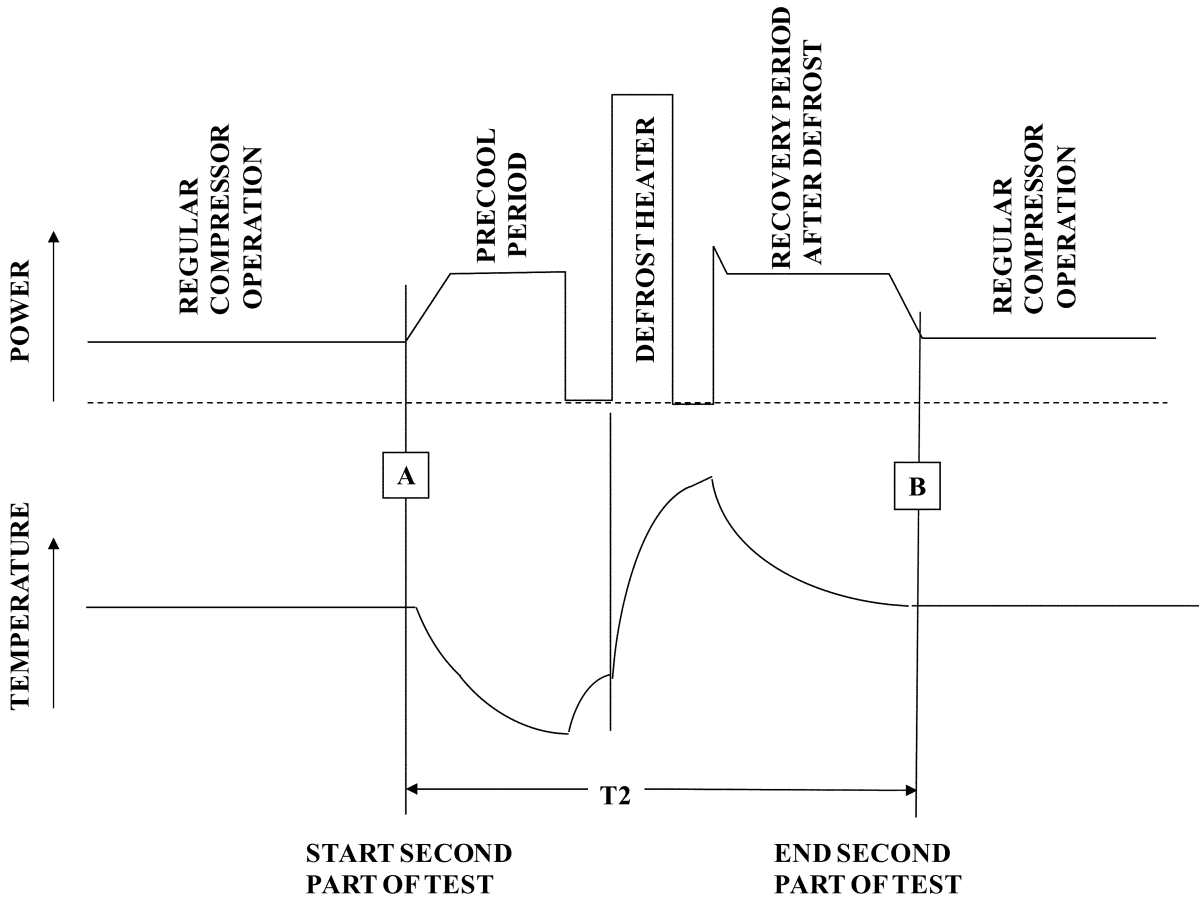


***Average compartment temperature(s) during cycles A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

4.2.1.2 Non-cycling Compressor System. For a system with a non-cycling compressor, the second part of the test starts at a time before defrost during stable operation when the temperatures of both fresh food and freezer compartments are within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. The second part stops at a time after defrost during stable operation when the temperatures of both compartments are within 0.5 °F (0.3 °C) of their average temperatures measured for the first part of the test. See Figure 2.

Figure 2

Long-time Automatic Defrost Diagram for Non-Cycling Compressors



***Average compartment temperature(s) at times A & B must be within 0.5 °F of the average temperature(s) for the first part of the test.**

* * * * *

4.2.4 Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. The two-part method in 4.2.1 shall be used. The second part of the method will be conducted separately for each distinct defrost cycle type.

* * * * *

5. Test Measurements

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5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

ET = (1440 × EP1/T1) + (EP2 − (EP1 × T2/T1)) × (12/CT),

Where:

1440 is defined in 5.2.1.1 and EP1, EP2, T1, T2, and 12 are defined in 5.2.1.2;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$;

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 but less than or equal to 12 hours);

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 6 and 96 shall be used, respectively.

* * * * *

5.2.1.5 Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + \sum_{i=1}^{D} \left[\left(EP2_i - (EP1 \times T2_i / T1) \right) \times (12/CT_i) \right]$$

Where:

1440 is defined in 5.2.1.1 and EP1, T1, and 12 are defined in 5.2.1.2;

i is a variable that can equal 1, 2, or more that identifies the distinct defrost cycle types applicable for the refrigerator or refrigerator-freezer;

$EP2_i$ = energy expended in kilowatt-hours during the second part of the test for defrost cycle type i;

$T2_i$ = length of time in minutes of the second part of the test for defrost cycle type i;

CT_i is the compressor run time between instances of defrost cycle type i, for long-time automatic defrost control equal to a fixed time in hours rounded to the nearest tenth of an hour, and for variable defrost control equal to

$(CT_{Li} \times CT_{Mi})/(F \times (CT_{Mi} - CT_{Li}) + CT_{Li})$;

CT_{Li} = least or shortest compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (CT_L for the defrost cycle type with the longest compressor run time between defrosts must be greater than or equal to 6 but less than or equal to 12 hours);

CT_{Mi} = maximum compressor run time between instances of defrost cycle type i in hours rounded to the nearest tenth of an hour (greater than CT_{Li} but not more than 96 hours);

For cases in which there are more than one fixed CT value (for long-time defrost models) or more than one CT_M and/or CT_L value (for variable defrost models) for a given defrost cycle type, an average fixed CT value or average CT_M and CT_L values shall be selected for this cycle type so that 12 divided by this value or values is the frequency of occurrence of the defrost cycle type in a 24 hour period, assuming 50% compressor run time.

F = default defrost energy consumption factor, equal to 0.20.

For variable defrost models with no values for CT_{Li} and CT_{Mi} in the algorithm, the default values of 6 and 96 shall be used, respectively.

D is the total number of distinct defrost cycle types.

■ 3. Appendix B to subpart B of part 430 is amended by:

■ a. Revising section 4.2.1.1 including figure 1;

■ b. Revising section 4.2.1.2, including figure 2; and

■ c. Revising section 5.2.1.3.

The revisions read as follows:

Appendix B to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Freezers

* * * * *

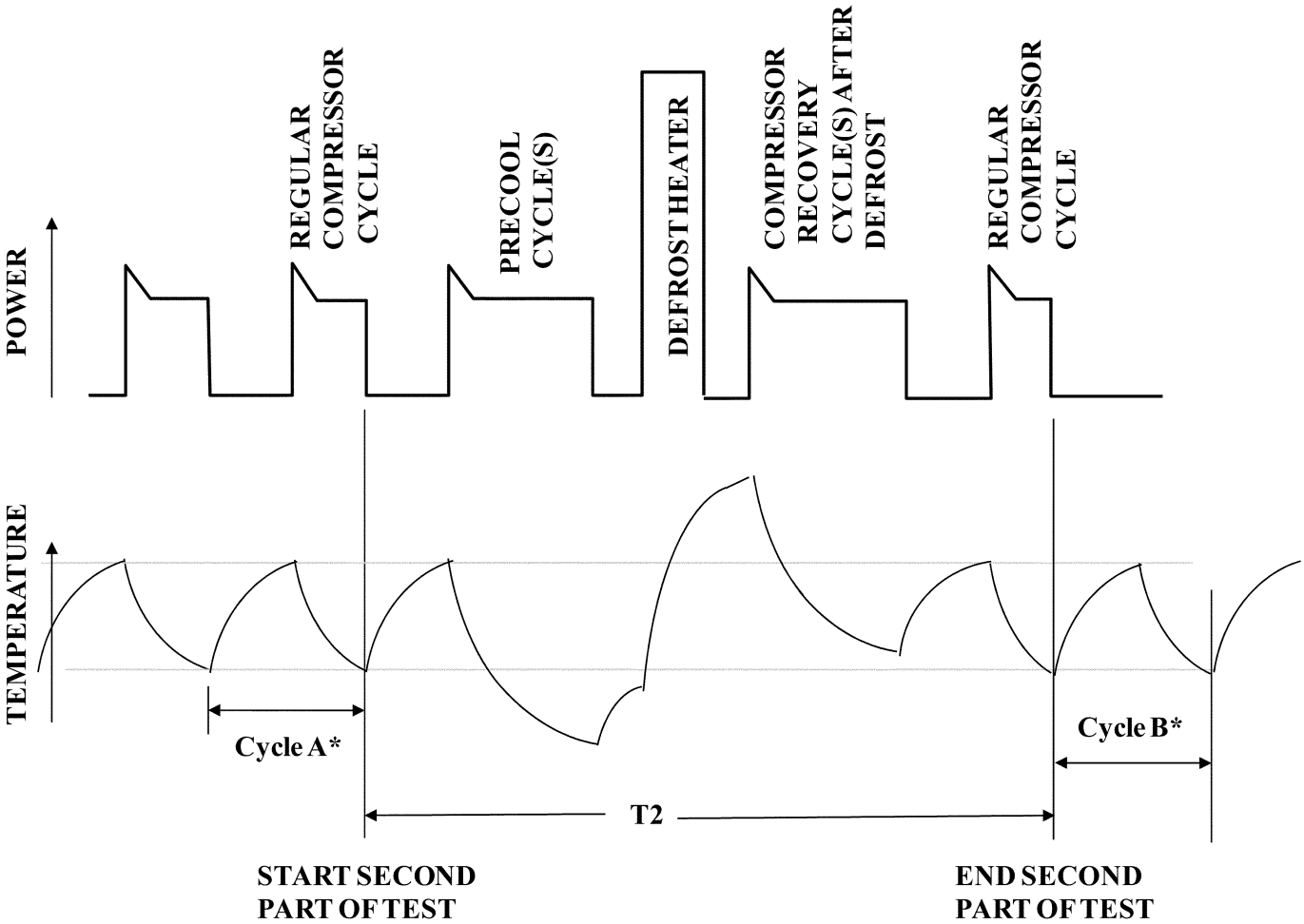
4. Test Period

* * * * *

4.2.1.1 Cycling Compressor System. For a system with a cycling compressor, the second part of the test starts at the termination of the last regular compressor ''on'' cycle. The average temperature of the compartment measured from the termination of the previous compressor ''on'' cycle to the termination of the last regular compressor ''on'' cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. If any compressor cycles occur prior to the defrost heater being energized that cause the average temperature in the compartment to deviate from the average temperature for the first part of the test by more than 0.5 °F (0.3 °C), these compressor cycles are not considered regular compressor cycles and must be included in the second part of the test. As an example, a ''precooling'' cycle, which is an extended compressor cycle that lowers the compartment temperature prior to energizing the defrost heater, must be included in the second part of the test. The test period for the second part of the test ends at the termination of the first regular compressor ''on'' cycle after the compartment temperatures have fully recovered to their stable conditions. The average temperature of the compartment measured from this termination of the first regular compressor ''on'' cycle until the termination of the next regular compressor ''on'' cycle must be within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. See Figure 1.

Figure 1

Long-time Automatic Defrost Diagram for Cycling Compressors

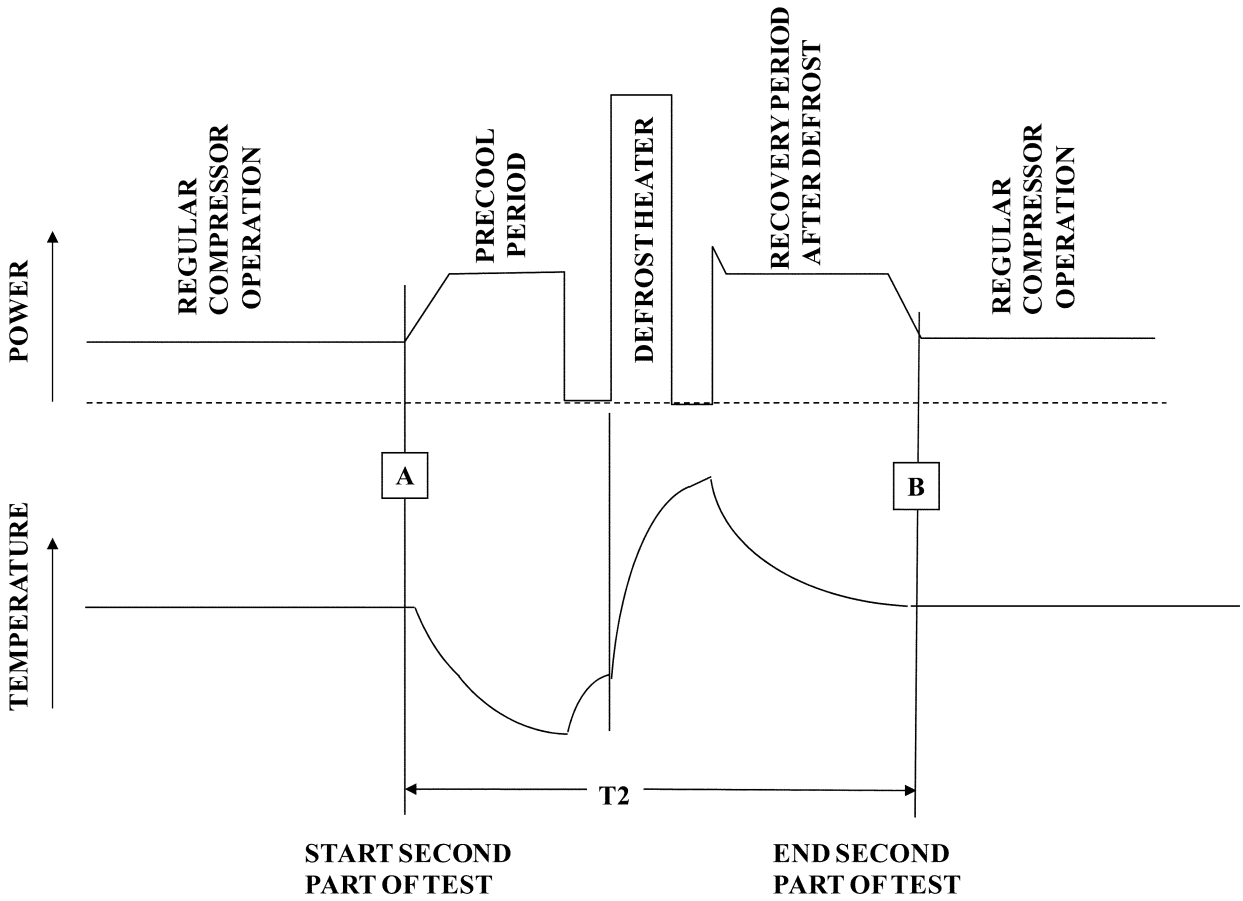


***Average compartment temperature during cycles A & B must be within 0.5 °F of the average temperature for the first part of the test.**

4.2.1.2 Non-cycling Compressor System. For a system with a non-cycling compressor, the second part of the test starts at a time before defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. The second part stops at a time after defrost during stable operation when the compartment temperature is within 0.5 °F (0.3 °C) of the average temperature of the compartment measured for the first part of the test. See Figure 2.

Figure 2

Long-time Automatic Defrost Diagram for Non-cycling Compressors



***Average compartment temperature at times A & B must be within 0.5 °F of the average temperature for the first part of the test.**

* * * * *

5. Test Measurements

* * * * *

5.2.1.3 Variable Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$ET = (1440 \times K \times EP1/T1) + (EP2 - (EP1 \times T2/T1)) \times K \times (12/CT)$,

Where:

ET, K, and 1440 are defined in section 5.2.1.1;

EP1, EP2, T1, T2, and 12 are defined in section 5.2.1.2;

$CT = (CT_L \times CT_M)/(F \times (CT_M - CT_L) + CT_L)$

Where:

CT_L = least or shortest compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than or equal to 6 hours but less than or equal to 12 hours);

CT_M = maximum compressor run time between defrosts in hours rounded to the nearest tenth of an hour (greater than CT_L but not more than 96 hours);

F = ratio of per day energy consumption in excess of the least energy and the maximum difference in per-day energy consumption and is equal to 0.20.

For variable defrost models with no values for CT_L and CT_M in the algorithm, the default values of 6 and 96 shall be used, respectively.

* * * * *

[FR Doc. 2012–1341 Filed 1–24–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0219; Directorate Identifier 2010–NM–228–AD; Amendment 39–16921; AD 2012–01–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200CB, and –300 series airplanes with off-wing escape slide systems installed. This AD was prompted by reports of in-flight loss of the off-wing escape slide.

This AD requires modifying the door latch fittings and witness mark placards of the off-wing escape slide systems; and for certain airplanes, replacing the bearings and lockbase retainer in the door latch assembly, relocating and adjusting the sensor target and the sensor proximity switch, and testing to ensure positive door locking and corrective action if necessary. For certain airplanes, this AD would also require installing a bumper assembly and placards. We are issuing this AD to prevent the in-flight loss of the off-wing escape slide, which could result in the unavailability of the escape slide during an emergency evacuation. Additionally, the departed slide could cause damage to the fuselage, wing, flaps, or stabilizer, which could degrade flight control.

DATES: This AD is effective February 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 29, 2012.

ADDRESSES: For service information identified in this AD, Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6495; fax: (425) 917–6590; email: *Kimberly.Devoe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 14, 2011 (76 FR 13541). That NPRM proposed to require modifying the door latch fittings and witness mark placards of the off-wing escape slide systems; and for certain airplanes, replacing the bearings and lockbase retainer in the door latch assembly, relocating and adjusting the sensor target and the sensor proximity switch, and testing to ensure positive door locking and corrective action if necessary. For certain airplanes, that NPRM also proposed to require installing a bumper assembly and placards.

Comments

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

Agreement With the Intent of the NPRM

American Airlines (American) stated it agrees with the intent of the NPRM (76 FR 13541, March 14, 2011). Continental Airlines (Continental) stated that it has no objection to paragraphs (g) and (h) of the NPRM.

Requests To Update Service Information

American, Boeing, and an anonymous commenter requested the NPRM (76 FR 13541, March 14, 2011) be updated to refer to Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011, which was released during the NPRM comment period.

We agree. Since the NPRM (76 FR 13541, March 14, 2011) was issued, Boeing has issued Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011, which clarifies door latch engagement information, clarifies kit availability, and adds existing part numbers. We have changed paragraphs (c) and (g) of the AD to refer to Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011; added paragraph (k) of the AD to give credit for actions already accomplished in accordance with Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008; and revised subsequent paragraph lettering.

Request To Delay Publication of the AD

Continental requested we delay publication of the final rule until Revision 3 to Boeing Service Bulletin 757–25–0182 is published. Continental justified its request by stating that it noticed some discrepancies in Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, and would prefer that Revision 3 of this service bulletin be issued prior to the issuance of the final rule.

We partially agree. We agree that discrepancies exist in Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001. We have reviewed Continental's comments with Boeing to obtain technical clarification. Boeing agrees with some of the discrepancies and has noted them for consideration for the next scheduled revision of this service bulletin. We disagree with delaying the issuance of the final rule because these minor discrepancies do not affect the operators' ability to accomplish the tasks specified in Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001. We have not changed the AD in this regard.

Request To Identify the Specific Steps in the Service Information

American requested we change the NPRM (76 FR 13541, March 14, 2011) to identify the steps in Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, that would be required to comply with paragraph (h)(2) of the NPRM. American justified its request by stating that identifying the specific steps will eliminate ambiguity and provide clear interpretation of the proposed AD.

We agree. Clarifying the required steps will assist operators in accomplishing the required tests and modifications and will not expand the scope of the AD. We have added the steps to paragraph (h)(2) of the AD.

Request To Allow an Alternative to the Door Open/Door Close Test of the Compartment Door

American requested we change paragraph (h)(2) of the NPRM (76 FR 13541, March 14, 2011) to allow replacement of the target and remount of the switch on the new bracket in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, as an alternative to performing the door open/door close test of the equipment compartment door. American justified its request by stating it accomplished the door open/door closed test of the compartment door as described in Boeing Service Bulletin

757–25–0182, Revision 2, dated January 11, 2001, in 2002 and 2003, and later experienced multiple off-wing slide deployments in 2006 and 2007.

We agree that replacing the target and remounting the switch on the new bracket is an alternative to performing the door open/door close test of the equipment compartment door. We have added a statement to paragraph (h)(2) of this AD indicating that replacing the target and remounting the switch on the new bracket terminates the testing requirement in that paragraph.

Request To Allow Certain Alternative Methods of Compliance (AMOCs)

American requested that all AMOCs previously approved for AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999), be applicable to the pertinent paragraphs of the NPRM (76 FR 13541, March 14, 2011). American justified its request by stating that since these AMOCs have previously demonstrated they provide the necessary equivalent level of safety to the original rule, transferring the applicability will prevent duplication of efforts already undertaken by both operators and the FAA.

We agree. AMOCs previously evaluated and approved as providing the necessary level of safety for AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999), would also provide the necessary level of safety for the corresponding requirements of this AD. We have added paragraph (l)(3) to the AD, which specifies that AMOCs approved previously in accordance with AD 99–17–20, Amendment 39–11266, are approved as AMOCs for the corresponding provisions of paragraph (h) of this AD.

Request To Allow the Replacement of Kept Parts With New Parts of the Same Part Number

American requested we change the NPRM (76 FR 13541, March 14, 2011) to allow replacement of kept parts with new parts of the same part number. American justified its request by stating that during the course of modification, parts may become damaged or lost, therefore rendering the kept hardware unserviceable or unavailable for installation.

We agree with using new parts where the service information calls for installation of kept parts because a part having the identical part number is acceptable for use whether it is kept or new. We have added new paragraph (h)(5) to this final rule to allow using new parts.

Request To Allow Operator Use of Approved Substitutes of Common Hardware

American requested we change the NPRM (76 FR 13541, March 14, 2011) to allow operators to use substitutes of common hardware (e.g., washers, nuts, bolts, and adhesives) that have been determined to be equivalent in accordance with the operator's parts management system to comply with hardware specified in Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011, Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001, Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000, and Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000.

We disagree. Parts management is an operator-specific process and needs to be evaluated on an individual basis. We will consider requests for approval of an AMOC under the provisions of paragraph (l) of this AD. Sufficient data must be submitted to substantiate that the operator's use of substitutes of common hardware would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

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

Costs of Compliance

We estimate that this AD will affect 451 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification of fittings and placards: Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011.	7 work-hours × $85 per hour = $595.	$1,365	$1,960	$883,960.
Modification: Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.	40 work-hours × $85 per hour = $3,400.	2,786	6,186	$1,880,544 (304 airplanes).
Test: Service Boeing Service Bulletin 757-25-0182, Revision 2, dated January 11, 2001.	2 work-hours × $85 per hour = $170.	0	170	$76,670.
Bumper assembly and placards installation: Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000.	4 work-hours × $85 per hour = $340.	457	797	$272,574 (342 airplanes).
Bumper assembly and placards installation: Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000.	4 work-hours × $85 per hour = $340.	457	797	$0 (0 airplanes).

We estimate the following costs to do any necessary replacements that would be required based on the results of the test. We have no way of determining the number of aircraft that might need these replacements.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement and remount; Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.	4 work-hours × $85 per hour = $340.	$2,786	$3,126

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–09 The Boeing Company: Amendment 39–16921; Docket No. FAA–2011–0219; Directorate Identifier 2010–NM–228–AD.

(a) Effective Date

This AD is effective February 29, 2012.

(b) Affected ADs

Certain requirements of this AD affect certain requirements of AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200CB, and –300 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011; with off-wing escape slide systems installed.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25, Equipment and Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of in-flight loss of the off-wing escape slide. We are issuing this AD to prevent the in-flight loss of the off-wing escape slide, which could result in the unavailability of the escape slide during an emergency evacuation. Additionally, the departed slide could cause damage to the fuselage, wing, flaps, or stabilizer, which could degrade flight control.

(f) Compliance

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

(g) Modification

Within 60 months after the effective date of this AD, modify the door latch fittings and witness mark placards of the left and right off-wing escape slide systems, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011.

(h) Concurrent Actions

Concurrently with or before accomplishing the actions specified in paragraph (g) of this AD, do the applicable actions specified in paragraphs (h)(1), (h)(2), (h)(3), and (h)(4) of this AD.

(1) For airplanes that have not been modified by Boeing Service Bulletin 757–25–0182, dated October 10, 1996; or Revision 1, dated June 12, 1997; as of the effective date of this AD: Modify the door latch system of the left and right off-wing emergency evacuation slide systems, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.

(2) For airplanes that have been modified by Boeing Service Bulletin 757–25–0182, dated October 10, 1996; or Revision 1, dated June 12, 1997; as of the effective date of this AD: Do a test to verify that the modified compartment door sensor provides an accurate indication of the door lock condition, in accordance with Part II, Steps A. through C., of the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001. If the test indicates that the compartment door is not locking positively, concurrently with or before accomplishing the actions specified in paragraph (g) of this AD, replace the target and remount the switch on the new bracket, in accordance with Part II, Steps F. through V., of the Accomplishment Instructions of Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001. Replacing the target and remounting the switch on the new bracket terminates the testing requirement in this paragraph.

(3) For airplanes identified in Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000: Concurrently with or before accomplishing the actions required by paragraph (g) of this AD, install a bumper assembly on the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000.

(4) For airplanes identified in Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000: Concurrently with or before accomplishing the actions required by paragraph (g) of this AD, install a bumper assembly on the left and right off-wing escape slide carriers, and install new placards in the area of the maintenance access door, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000.

(5) Using new parts having the same part number where the service information calls for installation of kept parts is acceptable for compliance with the requirements of this AD.

(i) Terminating Action for Paragraph (a)(1) of AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999)

Actions done in accordance with paragraph (h)(1) of this AD terminate the requirements of paragraph (a)(1) of AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999).

(j) Terminating Action for Paragraph (a)(2) of AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999)

Actions done in accordance with paragraph (h)(3) of this AD terminate the corresponding requirements of paragraph (a)(2) of AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999).

(k) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 757–25–0200, dated January 21, 1999, are acceptable for compliance with the corresponding requirements of paragraphs (h)(3) and (h)(4) of this AD. Actions done

before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 757–25–0298, dated October 16, 2008, are acceptable for compliance with the corresponding requirements of paragraph (g) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) AMOCs approved in accordance with AD 99–17–20, Amendment 39–11266 (64 FR 45436, August 20, 1999), are approved as AMOCs for the corresponding provisions of paragraph (h) of this AD.

(m) Related Information

For more information about this AD, contact Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6495; fax: (425) 917–6590; email: *Kimberly.Devoe@faa.gov.*

(n) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) Boeing Special Attention Service Bulletin 757–25–0298, Revision 1, dated April 12, 2011.

(ii) Boeing Service Bulletin 757–25–0182, Revision 2, dated January 11, 2001.

(iii) Boeing Service Bulletin 757–25–0200, Revision 1, dated August 3, 2000.

(iv) Boeing Special Attention Service Bulletin 757–25–0219, dated August 3, 2000.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com;* Internet: *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on January 13, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1125 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0995; Directorate Identifier 2010–NM–243–AD; Amendment 39–16920; AD 2012–01–08]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and 328–300 airplanes. This AD was prompted by a manufacturer safety analyses review on flight control which resulted in recommendations for reduced repetitive inspection intervals for the flight controls certification maintenance requirements (CMR) of the tab-to-actuator linkage. This AD requires revising the airplane maintenance program by incorporating certain CMR tasks. We are issuing this AD to prevent failure of these components or their constituent parts which could lead to reduced control of the airplane.

DATES: This AD becomes effective February 29, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 29, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 5, 2011 (76 FR 61638). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Based on in-service experience, the System Safety Analyses for the Flight Controls have been reviewed and their conclusions have been accepted during the latest Candidate Maintenance Coordination Committee meeting.
>
> This review resulted in reduced inspection intervals, specifically for the flight controls tab-to-actuator linkage CMR repetitive inspections, which have been identified as mandatory actions for continued airworthiness.
>
> Failure of these components or their constituent parts could lead to reduced control of the aeroplane.
>
> Consistent with the [European Aviation Safety Agency] EASA policy to require compliance with any new and reduced airworthiness limitations by taking AD action and for the reasons described above, this EASA AD requires the accomplishment of the reduced-interval repetitive inspections and, depending on findings, related corrective action(s). In addition, this [EASA] AD requires the implementation of the affected reduced inspection intervals and associated corrective actions into the operator's approved maintenance programme.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 61638, October 5, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 61638, October 5, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 61638, October 5, 2011).

Costs of Compliance

We estimate that this AD will affect 63 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,355, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 61638, October 5, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–08 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–16920. Docket No. FAA–2011–0995; Directorate Identifier 2010–NM–243–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 29, 2012.

(b) Affected ADs

None.

(c) Applicability

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

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight Controls.

(e) Reason

This AD was prompted by a manufacturer safety analysis review on flight control which resulted in recommendations for reduced repetitive inspection intervals for the flight controls certification maintenance requirements (CMR) of the tab-to-actuator linkage. We are issuing this AD to prevent failure of these components or their constituent parts which could lead to reduced control of the airplane.

(f) Compliance

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

(g) Maintenance Program Revision

Within 100 flight hours after the effective date of this AD: Revise the airplane maintenance program by incorporating the applicable CMR tasks identified in table 1 of this AD.

TABLE 1—CMR TASKS

Model—	Task No.—	Task description—	Identified in—
328–100 airplanes	Task 27–10–00–09	Visual Check of Mechanical Linkages: Aileron Trim Tab to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.
328–100 airplanes	Task 27–20–00–09	Visual Check of Mechanical Linkages: Rudder Trim Tab/Spring Tab to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.
328–100 airplanes	Task 27–30–00–13	Visual Check of Mechanical Linkages: Elevator Trim Tabs to Actuator.	328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.

TABLE 1—CMR TASKS—Continued

Model—	Task No.—	Task description—	Identified in—
328–300 airplanes	Task 27–10–00–13	Visual Check of Linkage: Aileron Trim Tab to Actuator.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.
328–300 airplanes	Task 27–20–00–11	Visual Check of Linkage: Rudder Trim Tab/Spring Tab.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.
328–300 airplanes	Task 27–30–00–14	Visual Check of Linkage: Elevator Trim Tabs to Actuator.	328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.

(h) Initial Compliance Time

The initial compliance time for the CMR tasks identified in table 1 of this AD is within 500 flight hours after the most recent inspection, or within 100 flight hours after the effective date of this AD, whichever occurs later.

(i) No Alternative Inspections or Inspection Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative inspection or inspection interval may be used unless the inspection or inspection interval is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0054, dated March 25, 2010, and the following service information identified in paragraphs (k)(1) and (k)(2) of this AD; for related information.

(1) 328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007.

(2) 328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007.

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(i) 328 Support Services Dornier 328 Certification Maintenance Requirements Document TM–CMR–010793–ALL, Revision 13, dated April 30, 2007. The document number of this document is listed only on the title page of the document.

(ii) 328 Support Services Dornier 328JET Certification Maintenance Requirements Document TM–CMR–010599–ALL, Revision 2, dated May 1, 2007. The document number of this document is listed only on the title page of the document.

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

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

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

Issued in Renton, Washington, on January 13, 2012.

John Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1126 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1212; Directorate Identifier 2011–CE–034–AD; Amendment 39–16923; AD 2012–01–11]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Cirrus Design Corporation (Cirrus) Model SR22T airplanes. This AD was prompted by reports of partial loss of engine power due to a dislodged rubber gasket/seal being ingested into the turbocharger. This AD requires inspection and modification of the air box flange welds and slots and installation of induction system air box seals as applicable. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective February 29, 2012.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in the AD as of February 29, 2012.

ADDRESSES: For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811–1548, phone: (218) 788–3000; fax: (218) 788–3525; email: *fieldservice@cirrusaircraft.com*; Internet: *http://www.cirrusaircraft.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael Downs, Propulsion Engineer, Chicago ACO, FAA, O'Hare Lake Office Center, 2300 East Devon Ave., Des Plaines, Illinois 60018; phone: (847) 294–7870; fax: (847) 294–7834; email: *michael.downs@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on November 2, 2011 (76 FR 67631). That NPRM proposed to require inspection and modification of the air box flange welds and slots and installation of induction system air box seals as applicable.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 67631, November 2, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 67631, November 2, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 67 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement of the induction system air box seals and extension of air box flange slots.	2.5 work-hours × $85 per hour = $212.50	$139	$351.50	$23,550.50

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–11 Cirrus Design Corporation Airplanes: Amendment 39–16923; Docket No. FAA–2011–1212; Directorate Identifier 2011–CE–034–AD.

(a) Effective Date

This AD is effective February 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following model and serial number airplanes, certificated in any category:

(1) *Group 1 Airplanes:* Cirrus Design Corporation Model SR22T airplanes, serial numbers 0001 through 0169, except 0004, 0019, 0027, 0047, 0097, 0126, 0127, 0135, 0138, 0139, 0144, 0154, 0155, 0157, 0158, 0159, 0160, 0161, and 0163.

(2) *Group 2 Airplanes:* Cirrus Design Corporation Model SR22T airplanes, serial numbers 0004, 0019, 0027, 0047, 0097, 0126, 0127, 0135, 0138, 0139, 0144, 0155, 0157, 0158, 0160, and 0161. These airplanes had the reinforced silicone fiberglass seals installed at the factory but the box flange welds and slots may be incorrectly modified. Therefore, this AD still applies to these airplanes.

(d) Subject

Joint Aircraft System Component (JASC) Code 7160, Engine Air Intake.

(e) Unsafe Condition

This AD was prompted by reports of partial loss of engine power due to a dislodged rubber gasket/seal being ingested into the turbocharger. We are issuing this AD to inspect and modify the air box flange welds and slots and install induction system air box seals as applicable.

(f) Compliance

Comply with this AD following Cirrus Design Corporation SR22T Service Bulletin SB 2X–71–17 R1, dated September 30, 2011, within the compliance times specified, unless already done.

(g) Actions

(1) *Group 1 Airplanes:* Within the next 10 hours time-in-service (TIS) after February 29, 2012 (the effective date of this AD), inspect the air box flange welds and slots, make modifications as necessary, and replace the induction air box seals with reinforced silicone fiberglass seals part number 29486–001.

(2) *Group 2 Airplanes:* Within the next 10 hours TIS after February 29, 2012 (the effective date of this AD), inspect the air box flange welds and slots and, as necessary, make modifications.

(h) Credit for Actions Accomplished in Accordance With Previous Service Information

Credit will be given for actions required in paragraphs (g)(1) and (g)(2) of this AD if already done before February 29, 2012 (the effective date of this AD) following Cirrus Design Corporation SR22T Service Bulletin SB 2X–71–17, dated July 21, 2011.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

For more information about this AD, contact Michael Downs, Propulsion Engineer, Chicago ACO, FAA, O'Hare Lake Office Center, 2300 East Devon Ave., Des Plaines, Illinois 60018; phone: (847) 294–7870; fax: (847) 294–7834; email: *michael.downs@faa.gov.*

(k) Material Incorporated by Reference

(1) You must use Cirrus Design Corporation SR22T Service Bulletin SB 2X–71–17 R1, dated September 30, 2011, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811–1548, phone: (218) 788–3000; fax: (218) 788–3525; email: *fieldservice@cirrusaircraft.com;* Internet: *http://www.cirrusaircraft.com.*

(3) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on January 13, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–1122 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1063; Directorate Identifier 2011–NM–080–AD; Amendment 39–16918; AD 2012–01–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 767–200 and 767–300 series airplanes. This AD was prompted by reports of water accumulation in the forward lower lobe of the forward cargo compartment. This AD requires installing cargo bulkhead supports, ceiling supports, a secondary dam support, drainage tubing, and ceiling panels to the forward lower lobe in the forward cargo compartment. We are issuing this AD to prevent water from accumulating in the forward lower lobe of the forward cargo compartment and entering the adjacent electronic equipment bay, which could result in an electrical short and the potential loss of several functions essential for safe flight.

DATES: This AD is effective February 29, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 29, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com*; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6596;

fax: (425) 917–6590; email: *Francis.Smith@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on October 11, 2011 (76 FR 62661). That NPRM was proposed to require installing cargo bulkhead supports, ceiling supports, a secondary dam support, drainage tubing, and ceiling panels to the forward lower lobe in the forward cargo compartment.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supports the NPRM (76 FR 62661, October 11, 2011).

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 62661, October 11, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 62661, October 11, 2011).

Costs of Compliance

We estimate that this proposed AD affects 1 airplane of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	16 work-hours × $85 per hour = $1,360 per installation.	Up to $27,077	Up to $28,437	Up to $28,437.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–01–06 The Boeing Company: Amendment 39–16918; Docket No. FAA–2011–1063; Directorate Identifier 2011–NM–080–AD.

(a) Effective Date

This AD is effective February 29, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 767–200 and 767–300 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–25A0505, dated January 14, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25: Equipment and Furnishings.

(e) Unsafe Condition

This AD was prompted by reports of water accumulation in the forward lower lobe of the forward cargo compartment. We are issuing this AD to prevent water from accumulating in the forward lower lobe of the forward cargo compartment and entering the adjacent electronic equipment bay, which could result in an electrical short and the potential loss of several functions essential for safe flight.

(f) Compliance

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

(g) Retrofit Installation of Drainage Tubing and Support Structure

Within 24 months after the effective date of this AD: Install cargo bulkhead supports, right-side ceiling supports, left-side ceiling supports, a secondary dam support, drainage tubing, and ceiling panels, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–25A0505, dated January 14, 2011.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

(i) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6596; fax: (425) 917–6590; email: *Francis.Smith@faa.gov*.

(j) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Boeing Alert Service Bulletin 767–25A0505, dated January 14, 2011.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; phone: (206) 544–5000, extension 1; fax: (206) 766–5680; email: *me.boecom@boeing.com*; Internet: *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on January 6, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–838 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1398; Airspace Docket No. 11–AAL–21]

RIN 2120–AA66

Revision of Compulsory Reporting Points; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the published description of two low altitude Alaskan compulsory reporting points; one in the vicinity of Homer and the other in the vicinity of Kenai. Specifically, the FAA is revising the description of CLAMS and SKILA to address recent technical adjustments to their actual locations.

DATES: *Effective Dates:* Effective date 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 Mission Support Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA has determined that the low altitude Alaskan compulsory reporting point CLAMS, in the vicinity of Homer, and SKILA, in the vicinity of Kenai, require their published descriptions be revised to match updated position information contained in the FAA's aeronautical database and align with their actual locations. In addition to improved measurement accuracies for describing both low altitude compulsory reporting points, SKILA is also affected by the Anchorage VHF Omnidirectional Range (VOR) navigation aid relocation from Fire Island, AK, onto the Ted Stevens International Airport, AK, property. There are no changes to routing or air traffic control procedures resulting from this action. Accordingly, since this is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising the low altitude Alaskan compulsory reporting point CLAMS and SKILA descriptions to match updated position information contained in the FAA aeronautical database and more accurately reflect the actual locations of compulsory reporting points.

Alaskan Low Altitude Reporting Points are listed in paragraph 7004 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 compulsory reporting points listed in this document will be revised subsequently in the Order.

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

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

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

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311a, FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' This airspace action is not expected to cause

any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 7004 Alaskan Low Altitude Reporting Points

* * * * *

CLAMS [Amended]

Lat. 59°53′30″ N., long. 152°16′56″ W. (INT Homer, AK, 294°, Kenai, AK, 217° radials).

* * * * *

SKILA [Amended]

Lat. 60°29′50″ N., long. 150°40′02″ W. (INT Anchorage, AK, 208°, Homer, AK, 026° radials).

* * * * *

Issued in Washington, DC, on January 17, 2012.

Gary A. Norek,

Acting Manager, Airspace, Regulations, & ATC Procedures Group.

[FR Doc. 2012–1394 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 23

RIN 3038–AC95

Registration of Swap Dealers and Major Swap Participants; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects language in the final rules published in the **Federal Register** of Thursday, January 19, 2012, regarding the Registration of Swap Dealers and Major Swap Participants. The Commission adopted regulations under the Commodity Exchange Act (Act or CEA) that establish the process for the registration of swap dealers (SDs) and major swap participants (MSPs, and collectively with SDs, Swaps Entities) in accordance with section 4s of the CEA, which was added recently to the CEA by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

DATES: Effective March 19, 2012.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Christopher W. Cummings, Special Counsel, or Elizabeth Miller, Attorney-Advisor, Division of Swap Dealer and Intermediary Oversight, 1155 21st Street NW., Washington, DC 20581. Telephone number: (202) 418–6700 and electronic mail: *bgold@cftc.gov, ccummings@cftc.gov,* or *emiller@cftc.gov.*

SUPPLEMENTARY INFORMATION: In the final rule, FR Doc. 2012–00792, on page 2613 in the issue of Thursday, January 11, 2012, the following corrections are made:

■ 1. On page 2616 in the right column, beginning on the thirteenth line of the footnotes, the text ''4s(f), 4s(h),'' in footnote 33 is corrected to read ''4s(f), 4s(g), 4s(h)''.

PART 3—REGISTRATION

§ 3.1 [Corrected]

■ 2. On page 2626 in the left column, in § 3.1 Definitions, in paragraph (f), ''4s(e), 4s(f), 4s(h), 4s(*i*), 4s(j), 4s(k) or 4s(*l*) of the Act.'' is corrected to read ''4s(e), 4s(f), 4s(g), 4s(h), 4s(*i*), 4s(j), 4s(k) or 4s(*l*) of the Act.''

PART 23—[CORRECTED]

■ 3. On page 2629 in the left column, ''Subpart A—Definitions'' is corrected to read ''Subpart A—[Reserved]''.

Dated: January 20, 2012.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2012–1507 Filed 1–24–12; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–9295; File No. S7–31–11]

RIN 3235–AL20

Covered Securities of Bats Exchange, Inc.

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is adopting an amendment to Rule 146 under Section 18 of the Securities Act of 1933, as amended, (''Securities Act'') to designate certain securities listed, or authorized for listing, on BATS Exchange, Inc. (''BATS'' or ''Exchange'') as covered securities for purposes of Section 18 of the Securities Act. Covered securities under Section 18 of the Securities Act are exempt from state law registration requirements. The Commission also is making corrections to the rule text to reflect name changes.

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: David R. Dimitrious, Senior Special Counsel, (202) 551–5131, Ronesha Butler, Special Counsel, (202) 551–5629, or Carl Tugberk, Special Counsel, (202) 551–6049, or Tyler Raimo, Special Counsel, (202) 551–6227, Division of Trading and Markets (''Division''), Commission, 100 F Street NE., Washington, DC 20549–6628.

SUPPLEMENTARY INFORMATION:

I. Introduction

In 1996, Congress amended Section 18 of the Securities Act to exempt from state registration requirements securities listed, or authorized for listing, on the New York Stock Exchange LLC (''NYSE''), the American Stock Exchange LLC (''Amex'') (now known as NYSE Amex LLC),[1] or the National Market System of The NASDAQ Stock

[1] On October 1, 2008, NYSE Euronext acquired The Amex Membership Corporation (''AMC'') pursuant to an Agreement and Plan of Merger, dated January 17, 2008 (the ''Merger''). In connection with the Merger, NYSE Amex's predecessor, the Amex, a subsidiary of AMC, became a subsidiary of NYSE Euronext called NYSE Alternext US LLC (''NYSE Alternext''). *See* Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex 2008–62) (approving the Merger). In 2009, the Exchange changed its name from NYSE Alternext to NYSE Amex LLC (''NYSE Amex''). *See* Securities Exchange Act Release No. 59575 (March 13, 2009), 74 FR 11803 (March 19, 2009) (SR–NYSEALTR–2009–24) (approving the name change).

Market LLC (''Nasdaq/NGM'') [2] (collectively, the ''Named Markets''), or any national securities exchange designated by the Commission to have substantially similar listing standards to those of the Named Markets.[3] More specifically, Section 18(a) of the Securities Act provides that ''no law, rule, regulation, or order, or other administrative action of any State * * * requiring, or with respect to, registration or qualification of securities * * * shall directly or indirectly apply to a security that—(A) is a covered security.'' [4] Covered securities are defined in Section 18(b)(1) of the Securities Act to include those securities listed, or authorized for listing, on the Named Markets, or securities listed, or authorized for listing, on a national securities exchange (or tier or segment thereof) that has listing standards that the Commission determines by rule are ''substantially similar'' to those of the Named Markets (''Covered Securities'').[5]

Pursuant to Section 18(b)(1)(B) of the Securities Act, the Commission adopted Rule 146.[6] Rule 146(b) lists those national securities exchanges, or segments or tiers thereof, that the Commission has determined to have listing standards substantially similar to those of the Named Markets and thus securities listed on such exchanges are deemed Covered Securities.[7] BATS has petitioned the Commission to amend Rule 146(b) to designate certain securities listed on BATS [8] as Covered Securities for the purpose of Section 18 of the Securities Act.[9]

On August 8, 2011, the Commission issued a release proposing to amend Rule 146(b) to designate certain securities listed, or authorized for listing, on BATS as covered securities for purposes of Section 18(a) of the Securities Act.[10] The Commission also proposed to update certain references in the rule. The Commission received one comment letter,[11] which favored amending Rule 146(b) to reflect the name change of Phlx, as proposed by the Commission. In connection with its petition, BATS filed a proposed rule change to establish standards for the listing of securities on BATS.[12] On August 30, 2011, the Commission approved this proposed rule change.[13]

Based on the approved BATS listing standards and after careful comparison, the Commission has determined that BATS' listing standards for Tier I and Tier II securities are substantially similar to the listing standards of the Named Markets. Accordingly, the Commission today is amending Rule 146(b) to designate securities listed, or authorized for listing, on Tier I and Tier II of BATS as Covered Securities under Section 18(b)(1) of the Securities Act.[14] Amending Rule 146(b) to include these securities as Covered Securities will exempt those securities from state registration requirements as set forth under Section 18(a) of the Securities Act.[15] The Commission also is adopting, as proposed, updated references in the rule.

The Commission notes that the proposed rule text would have designated any security listed, or authorized for listing, on BATS as a Covered Security. In light of BATS recent rule amendment defining ''Tier I'' and ''Tier I securities'' to include ETPs,[16] the Commission is refining the rule text adopted today to designate those securities listed on Tier I and Tier II of the Exchange as Covered Securities. This designation is substantively identical to the proposed rule text, as the same securities that the Commission proposed to be designated as Covered Securities in the Proposing Release will be so designated.

II. Amendment to Rule 146(b) To Include BATS Securities

Under Section 18(b)(1)(B) of the Securities Act,[17] the Commission has the authority to determine that the listing standards of an exchange, or tier or segment thereof, are substantially similar with those of the NYSE, NYSE Amex, or Nasdaq/NGM. The Commission initially compared BATS' listing standards for Tier I and Tier II securities with those of one of the Named Markets. If the listing standards in a particular category were not substantially similar to the standards of that market, the Commission compared BATS' standards to one of the other two markets.[18] In addition, as it has done

[2] As of July 1, 2006, the National Market System of The NASDAQ Stock Market LLC is known as the Nasdaq Global Market (''NGM''). *See* Securities Exchange Act Release Nos. 53799 (May 12, 2006), 71 FR 29195 (May 19, 2006) and 54071 (June 29, 2006), 71 FR 38922 (July 10, 2006).

[3] *See* National Securities Markets Improvement Act of 1996, Pub. L. 104–290, 110 Stat. 3416 (October 11, 1996).

[4] 15 U.S.C. 77r(a).

[5] 15 U.S.C. 77r(b)(1)(A) and (B). In addition, securities of the same issuer that are equal in seniority or senior to a security listed on a Named Market or national securities exchange designated by the Commission as having substantially similar listing standards to a Named Market are covered securities for purposes of Section 18 of the Securities Act. 15 U.S.C. 77r(b)(1)(C).

[6] Securities Exchange Act Release No. 39542 (January 13, 1998), 63 FR 3032 (January 21, 1998) (determining that the listing standards of the Chicago Board Options Exchange, Incorporated (''CBOE''), Tier 1 of the Pacific Exchange, Inc. (''PCX'') (now known as NYSE Arca, Inc.), and Tier 1 of the Philadelphia Stock Exchange, Inc. (''Phlx'') (now known as NASDAQ OMX PHLX LLC) were substantially similar to those of the Named Markets and that securities listed pursuant to those standards would be deemed Covered Securities for purposes of Section 18 of the Securities Act). In 2004, the Commission amended Rule 146(b) to designate options listed on the International Securities Exchange, Inc. (''ISE'') (now known as the International Securities Exchange, LLC) as Covered Securities for purposes of Section 18(b) of the Securities Act. *See* Securities Act Release No. 8442 (July 14, 2004), 69 FR 43295 (July 20, 2004). In 2007, the Commission amended Rule 146(b) to designate securities listed on the Nasdaq Capital Market (''NCM'') as Covered Securities for purposes of Section 18(b) of the Securities Act. *See* Securities Act Release No. 8791 (April 18, 2007), 72 FR 20410 (April 24, 2007).

[7] 17 CFR 230.146(b).

[8] BATS recently filed an immediately effective rule change to amend Rule 14.1 of its listing standards to include all securities listed on the Exchange pursuant to Rule 14.11 as Tier I securities. Exchange Rule 14.11 sets forth the criteria for listing certain exchange traded products, including exchange traded funds, portfolio depository receipts, index fund shares and various other types of securities (collectively, ''ETPs''). ETPs were not designated as either Tier I or Tier II securities prior to this amendment. The Exchange's recent filing modifies the definitions of ''Tier I'' in Rule 14.1(a)(29), and ''Tier I security'' in Rule 14.1(a)(30), to make clear that ETPs are considered Tier I securities for purposes of the Exchange's rules. *See* Exchange Act Release No. 65809 (November 23, 2011), 76 FR 74079 (November 30, 2011). The Commission notes that this is only a definitional change. It does not result in any substantive changes to the Exchange's existing listing standards that are the subject of this rule amendment.

[9] *See* letter from Eric Swanson, Senior Vice President and General Counsel, BATS, to Elizabeth M. Murphy, Secretary, Commission, dated May 26, 2011 (File No. 4–632) (''BATS Petition'').

[10] Securities Act Release No. 9251 (August 8, 2011), 76 FR 46698 (August 11, 2011) (''Proposing Release'').

[11] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Keith Paul Bishop, former California Commissioner of Corporations, dated August 23, 2011 (''Bishop Letter''). The commenter concurred with the Commission that Rule 146(b)(1)(iv) should be updated to reflect the term ''NASDAQ OMX PHLX LLC'' instead of ''the Philadelphia Stock Exchange, Inc.'' The commenter also requested that the Commission review the current standards of the PHLX with respect to the listing and trading of securities to determine whether the current listing standards of PHLX are substantially similar to standards of Named Market. The Commission has carefully considered the comment letter, and believes that the request of the commenter with regard to the listing standards of Phlx is beyond the scope of the Commission's proposed rule. However, the Commission notes that, via its oversight, inspection and enforcement functions, it regularly monitors the operations of registered exchanges and their compliance with the securities laws and rules applicable to them.

[12] *See* Securities Exchange Act Release No. 64546 (May 25, 2011), 76 FR 31660 (June 1, 2011) (proposing qualitative and quantitative listing requirements and standards for securities).

[13] Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011).

[14] 15 U.S.C. 77r(b)(1).

[15] 15 U.S.C. 77r(a).

[16] *See supra* note 8.

[17] 15 U.S.C. 77r(b)(1)(B).

[18] This approach is consistent with the approach that the Commission has previously taken. *See, e.g.,* Securities Act Release No. 7494 (January 13, 1998), 63 FR 3032 (January 21, 1998).

previously, the Commission interpreted the ''substantially similar'' standard to require listing standards at least as comprehensive as those of the Named Markets.[19] If BATS' listing standards were higher than those of the Named Markets, then the Commission still determined that BATS' listing standards are substantially similar to those of the Named Markets.[20] Finally, the Commission notes that differences in language or approach would not necessarily lead to a determination that BATS' listing standards are not substantially similar to those of any Named Market.[21]

The Commission has reviewed BATS' listing standards for securities to be listed and traded on BATS and, for the reasons discussed below, has determined that the standards are substantially similar to those of a Named Market.[22] Accordingly, the Commission is amending Rule 146(b) to include securities listed, or authorized for listing, on Tier I and Tier II of BATS. Because the Commission has determined BATS' qualitative listing standards for BATS' Tier I and Tier II securities, Tier I quantitative listing standards are substantively identical to the listing standards for Nasdaq/NGM securities (and, therefore, are ''substantially similar'' to a Named Market as required by Section 18(b)(1)(B)),[23] the discussion below focuses on BATS' Tier II quantitative listing standards. The Commission included in the Proposing Release its preliminary view that the Tier I and Tier II qualitative listing standards and Tier I quantitative listing standards were substantively identical to the listing standards for Nasdaq/NGM securities and received no comments on that view.[24]

A. Primary Equity Securities

As discussed in the Proposing Release, the Commission preliminarily believed that BATS' initial listing standards for primary equity securities listed on Tier II of the Exchange were substantially similar to those of NYSE Amex's common stock listing standards.[25] The Commission has determined that BATS' initial listing standards for primary equity securities are substantially similar to those of NYSE Amex. BATS' requirements relating to bid price,[26] round lot holders,[27] shares held by the public,[28] and required number of registered and active market makers [29] are substantially similar to NYSE Amex requirements. Additionally, BATS' proposed equity,[30] market value,[31] and net income [32] standards are substantially similar to NYSE Amex standards.

In addition to the above initial listing requirements, BATS requires that American Depositary Receipts (''ADRs'') comply with an additional criterion. Specifically, BATS requires there be at least 400,000 ADRs issued for such securities to be initially listed on BATS.[33] However, NYSE Amex does not have specific requirements for ADRs in addition to its initial listing standards for primary equity securities.[34] As noted above, the Commission may still determine that the petitioner's listing standards are substantially similar to those of the Named Markets if BATS' listing standards are higher than the Named Markets.[35] Further, as noted above, differences in language or approach of listing standards are not dispositive.[36] The Commission has determined that the quantitative initial listing standards for primary equity securities on Tier II of the Exchange are substantially similar to those of NYSE Amex.

The Commission has determined that the continued listing requirements for primary equity securities listed on Tier II of the Exchange, while not identical, are substantially similar to those of

[19] *See id.*

[20] *See* Securities Act Release No. 8791, *supra* note 6.

[21] *Id.*

[22] *See generally* BATS Chapter XIV; Securities Exchange Act Release No. 64546, *supra* note 8, 76 FR 31660. In making its determination of substantial similarity, as discussed in detail below, the Commission generally compared BATS' proposed qualitative listing standards for both Tier I and Tier II securities with Nasdaq/NGM's qualitative listing standards, BATS' proposed quantitative listing standards for Tier I securities with Nasdaq/NGM's quantitative listing standards, and BATS' proposed quantitative listing standards for Tier II securities with NYSE Amex's quantitative listing standards.

[23] *See infra* notes 42–49.

[24] *See* Proposing Release at 49699 to 49700 and n. 25 to n. 26. *See id.* at 49703 (discussing ETPs).

[25] *See* Proposing Release at 49700. BATS' use of ''primary equity securities'' and NYSE Amex's use of ''common stock'' is simply a difference in nomenclature, as BATS' listing standards define ''primary equity security'' as a company's first class of common stock. *See* BATS Rule 14.1(a)(21).

[26] BATS' listing standards require a minimum bid price of $4 per share for initial listing and $1 per share for continued listing while NYSE Amex requires a minimum bid price of $2–3 per share depending on the issuer for initial listing and will consider delisting if the price per share is ''low.'' *Compare* BATS Rule 14.9(b)(1)(A) *with* Section 102 of the NYSE Amex Company Guide. The Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the Named Markets; the Commission may determine that a petitioner's standards are substantially similar if they are higher, and differences in language or approach of the listing standards are not dispositive. *See supra* notes 19–21 and accompanying text.

[27] While BATS' listing standards require at least 300 round lot holders, NYSE Amex's listing standards require 400 or 800 public shareholders (depending upon the number of shares held by the public), or 300 or 600 public shareholders for its alternate listing standards. The Commission does not believe this difference precludes a determination of substantial similarity between the standards. Additionally, BATS' listing standards are identical to the listing standards of NCM, which the Commission previously found to be substantially similar to a Named Market. *See* Securities Act Release 8791, *supra* note 6 (determining that NCM listing standards, which are identical to BATS' listing standards for primary equity securities on Tier II of the Exchange, are substantially similar to these same Amex standards). With respect to NCM having alternative listing standards for the number of round lot holders, the Commission noted that this difference did not preclude a determination of substantial similarity between the standards. *See* Securities Act Release 8791, *supra* note 6, 72 FR at 20412; Securities Act Release No. 8754 (November 22, 2006), 71 FR 67762 (November 22, 2006) (proposing that the Commission amend Rule 146(b) to designate securities listed on the NCM as covered securities for purposes of Section 18(b) of the Securities Act).

[28] BATS' listing standards require a minimum of 1,000,000 publicly held shares while NYSE Amex requires a minimum of 500,000. *Compare* BATS Rule 14.9(b)(1)(B) *with* Section 102(a) of the NYSE Amex Company Guide. The Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the Named Markets; the Commission may determine that a petitioner's standards are substantially similar if they are higher, and differences in language or approach of the listing standards are not dispositive. *See supra* notes 17–19 and accompanying text.

[29] BATS' listing requirements require at least three registered and active market makers while NYSE Amex requires one specialist to be assigned. *Compare* BATS Rule 14.9(b)(1)(D) *with* Section 202(e) of the NYSE Amex Company Guide. The Commission may still determine that the petitioner's listing standards are substantially similar to those of the Named Markets if a petitioner's listing standards are higher than the Named Markets. *See* Securities Act Release No. 8791, *supra* note 6.

[30] BATS' listing standards require a company to have stockholder equity of at least $5 million, a market value of publicly held shares of at least $15 million, and a two-year operating history. *See* BATS Rule 14.9(b)(2)(A). NYSE Amex requires stockholder equity of at least $4 million, a market value of publicly held shares of at least $15 million, and a two-year operating history.

[31] BATS' listing standards require a market value of listed securities of at least $50 million and a market value of publicly held shares of at least $15 million, which is the same as required by NYSE Amex. *Compare* BATS Rule 14.9(b)(2)(B) *with* Section 101(c)(2)–(3) of the NYSE Amex Company Guide.

[32] BATS' listing standards require net income from continuing operations of at least $750,000, which is the same as required by NYSE Amex. *Compare* BATS Rule 14.9(b)(2)(C) *with* Section 101(d)(1) of the NYSE Amex Company Guide.

[33] *See* BATS Rule 14.9(b)(1)(E). This requirement is identical to NCM. *See* Nasdaq Rule 5505(a)(5); *see generally* Securities Act Release 8791, *supra* note 6 (determining that NCM listing standards, which are identical to BATS' standards for primary equity securities on Tier II of the Exchange, are substantially similar to the Amex standards).

[34] *See* Section 102 of the NYSE Amex Company Guide. *See also* Section 110 of the NYSE Amex Company Guide.

[35] *See* Securities Act Release No. 8791, *supra* note 6.

[36] *See id.*

NYSE Amex.[37] NYSE Amex's delisting criteria are triggered by poor financial conditions or operating results of the issuer.[38] Specifically, NYSE Amex will consider delisting an equity issue if: (i) Stockholders' equity is less than $2 million and such issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; (ii) stockholders' equity is less than $4 million and such issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years; (iii) stockholders' equity is less than $6 million if such issuer has sustained losses from continuing operations and/or net losses in its five most recent fiscal years; or (iv) the issuer has sustained losses which are so substantial in relation to its overall operations or its existing financial resources, or its financial condition has become so impaired that it appears questionable, in the opinion of the exchange, as to whether such company will be able to continue operations and/or meet its obligations as they mature.[39]

Although BATS does not have the same continued listing provisions for Tier II, BATS also looks at the financial condition and operating results of the issuer in order to determine whether to delist an issuer. BATS' continued listing standards for Tier II securities require compliance with either a (1) shareholder equity, (2) market value of listed securities or (3) net income standard. Specifically, for continued listing, BATS requires shareholder's equity of at least $2.5 million, market value of listed securities of at least $35 million, or net income of $500,000 from continuing operations in the past fiscal year or two out of three past fiscal years.[40] Further, BATS requires an issuer to have (i) a minimum bid price for continued listing of $1 per share,[41] (ii) at least two registered and active market makers, (iii) 300 public holders, and (iv) a minimum number of publicly held shares of at least 500,000 shares with a market value of at least $1 million.[42] The Commission has determined that the differences in the maintenance criteria for primary equity securities on BATS for Tier II Securities and common stock listed on NYSE Amex are not significant and that, taken as a whole, the criteria are substantially similar.[43]

B. Preferred Stock and Secondary Classes of Common Stock

The Commission compared the listing standards of preferred stock and secondary classes[44] of common stock on Tier II of the Exchange to the Nasdaq/NGM standards. As discussed in the Proposing Release,[45] the Commission preliminarily believed that BATS' standards were substantially similar to those of Nasdaq/NGM. BATS' initial and continued listing standards with respect to the number of round lot holders,[46] bid price,[47] number of publicly held shares,[48] market value of publicly held shares,[49] and number of market makers[50] are substantially similar to the Nasdaq/NGM standards.[51] As such, the Commission has determined that BATS' quantitative listing standards for preferred stock and secondary classes of common stock are substantially similar to those of Nasdaq/NGM.

[37] *See generally* Securities Act Release 8791, *supra* note 6 (determining that NCM continued listing standards, which are identical to BATS' continued listing standards for primary equity securities on Tier II of the Exchange, were substantially similar to the Amex standards).

[38] *See generally* Sections 1001 through 1006 of the NYSE Amex Company Guide.

[39] *See* Section 1003(a) of the NYSE Amex Company Guide. While not identical to NYSE Amex, BATS, as noted below, also has a shareholder equity standard. *See infra* note 37 and accompanying text. NYSE Amex, however, will not normally consider suspending dealing in (i) through (iii) noted above if the issuer is in compliance with the following: (1) Total market value of market capitalization of at least $50,000,000; or total assets and revenue of $50,000,000 each in its last fiscal year, or in tow of its last three fiscal years; and (2) the issuer has at least 1,100,000 shares publicly held, a value of publicly held shares of at least $15,000,000 and 400 round lot holders. *Id.*

NYSE Amex also will consider delisting if: (i) an issuer has sold or otherwise disposed of its principal operating assets or has ceased to be an operating company or has discontinued a substantial portion of its operations or business; (ii) if substantial liquidation of the issuer has been made; or (iii) if advice has been received, deemed by the Exchange to be authoritative, that the security is without value, or in the case of a common stock, such stock has been selling for a substantial period of time at a low price. *See* Section 1003(c) and (f)(v) of the NYSE Amex Company Guide.

[40] BATS Rule 14.9(e)(2)(A)–(C). NYSE Amex focuses on a shareholder equity standard for continued listing. BATS' shareholder equity standard requires at least $2.5 million shareholders' equity compared to NYSE Amex's lowest shareholder equity standard of $2 million, if the NYSE Amex issuer has sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years. *Compare* BATS Rule 14.9(e)(2)(A)–(C) *with* Section 1003(a) of the NYSE Amex Company Guide.

[41] *See* BATS Rule 14.9(e)(1)(B). Amex will consider delisting if the price per share is ''low.'' *See* Section 1003(f)(v) of the Amex Company Guide. *See also* Securities Act Release 8791, *supra* note 6 (noting the same regarding the NCM and Amex bid price standards).

[42] BATS Rule 14.9(e)(1)(A)–(E). NYSE Amex will consider delisting the common stock of an issuer if the aggregate market value of such publicly held shares is less than $1 million for more than 90 consecutive days, the number of publicly held shares is less than 200,000 shares, or the number of its public stockholders is less than 300. *See* Section 1003(b) of the NYSE Amex Company Guide.

[43] The Commission has interpreted the substantially similar standard to require listing standards at least as comprehensive as those of the Named Markets, and differences in language or approach of the listing standards are not dispositive. *See supra* notes 17–19 and accompanying text. *See also* Securities Act Release 8791, *supra* note 6 (determining that NCM continued listing standards, which are identical to BATS' continued listing standards for primary equity securities on Tier II of the Exchange, are substantially similar to the Amex standards).

[44] A secondary class of common stock is a class of common stock of an issuer that has another class of common stock listed on an exchange. *See* Securities Act Release No. 8791, *supra* note 6, at 20411.

[45] *See* Proposing Release at 49701 to 49702.

[46] BATS' initial and continued listing standards require 100 round lot holders, as Nasdaq/NGM requires. *Compare* BATS Rule 14.9(c) *with* Nasdaq Rule 5510; *compare* BATS Rule 14.9(f) *with* Nasdaq Rule 5460(a)(4).

[47] While BATS' bid price requirement for initial listing is $4 and the Nasdaq/NGM requirement is $5, the Commission does not believe this difference is significant. *Compare* BATS Rule 14.9(c)(1)(A) *with* Nasdaq Rule 5510(a)(1). *See also* Securities Act Release No. 8791, *supra* note 6, at 20412 n. 28 (determining that an NCM bid requirement, which is identical to BATS' bid requirement, was substantially similar to the Nasdaq/NGM requirement). Both BATS' standard and Nasdaq/NGM's existing standard require a $1 bid price for continued listing. *Compare* BATS Rule 14.9(f)(1) *with* Nasdaq Rule 5460(a)(3).

[48] BATS' standard requires 200,000 publicly held shares for initial listing, and 100,000 publicly held shares for continued listing, which is the same as Nasdaq/NGM requires. *Compare* BATS Rule 14.9(c)(1)(C) and 14.9(f)(1)(c) *with* Nasdaq Rules 5415(a)(1) and 5460(a)(1).

[49] BATS' standard for initial listing of preferred stock or a secondary class of common stock requires a market value of publicly held shares of at least $3.5 million. Nasdaq/NGM requires a market value of publicly held shares of at least $4 million. *Compare* BATS Rule 14.9(c)(1)(D) *with* Nasdaq Rule 5415(a)(2). BATS standard for continued listing requires a market value of publicly held shares of at least $1 million. Nasdaq/NGM requires a market value of publicly held shares of at least $1 million for continued listing. *Compare* BATS Rule 14.9(f)(1)(D) *with* Nasdaq Rule 5460(a)(1). The Commission believes BATS' initial and continued listing standards for preferred stock and secondary classes of common stock are substantially similar to Nasdaq/NGM. *See also* Securities Act Release No. 8791, *supra* note 6, at 20411–12 (determining that NCM listing standards, which are identical to BATS' listing standards for preferred stock and secondary classes of common stock, are substantially similar to the Nasdaq/NGM standards).

[50] BATS' standards for initial listing require at least three registered and active market makers, while its continued listing standards require at least two registered and active market makers. Nasdaq/NGM requires the same. *Compare* BATS Rule 14.9(c)(1)(E) *with* Nasdaq Rule 5415(a)(2).

[51] The Commission notes that these requirements apply to instances when the common stock or common stock equivalent security of the issuer is listed on BATS as a Tier II Security or otherwise is a Covered Security. If the common stock or common stock equivalent is not listed as a Tier II Security or is a Covered Security, then the security would be required to meet the initial primary equity listing requirements for Tier II noted above. Nasdaq/NGM contains a similar requirement. *Compare* BATS Rule 14.9(f)(2) *with* Nasdaq Rule 5460(b).

C. Warrants

The Commission compared BATS' listing standards for warrants to Nasdaq/NGM's standards. In the Proposing Release, the Commission stated that it preliminarily believed that the BATS' standards were substantially similar to the Nasdaq/NGM standards.[52] BATS' initial listing standards require that 400,000 warrants be outstanding for initial listing, and that there be at least three registered and active market makers and 400 round lot holders.[53] Nasdaq/NGM's standards are identical except that Nasdaq/NGM requires 450,000 warrants to be outstanding.[54] Though not identical with respect to the number of warrants outstanding standard, the Commission believes that the Nasdaq/NGM higher listing standards do not preclude a finding of substantial similarity. BATS' initial listing standards also require the issuer's underlying security to be listed on the Exchange or be a Covered Security.[55] The Commission notes that Nasdaq/NGM has a similar standard that the underlying security be listed on Nasdaq/NGM or be a Covered Security and believes BATS' standard is substantially similar to Nasdaq/NGM.[56] Therefore, the Commission has determined that BATS' initial listing standards for warrants are substantially similar to those of Nasdaq/NGM.[57]

As discussed in the Proposing Release, the Commission also preliminarily believed that BATS' continued listing requirements for warrants that there be two registered and active market makers (one of which may be a market maker entering a stabilizing bid) and that the underlying security remain listed on the Exchange or be a Covered Security were substantially similar to that of Nasdaq/NGM.[58] The Commission has determined that BATS' continued listing standards for warrants are substantially similar to those of Nasdaq/NGM.

D. Index Warrants

For index warrants traded on BATS, BATS has the same standards (both initial and continuing) that apply to index warrants traded on Nasdaq/NGM.[59] Therefore, the Commission has determined that the listing standards for index warrants traded on BATS are substantially similar to the standards applicable to index warrants traded on the Nasdaq/NGM market.

E. Convertible Debt

The Commission has compared BATS' listing standards for convertible debt to NYSE Amex's listing standards for debt, and preliminarily believed that BATS' initial listing standards for convertible debt were substantially similar to those of NYSE Amex. BATS' listing standards for convertible debt, regarding the threshold principal amount outstanding,[60] the availability of current last sale information,[61] and number of market makers [62] are substantially similar to NYSE Amex standards.[63] In addition to the requirements noted above, BATS' listing standards require that one of four additional conditions be met for listing of convertible debt. Specifically, BATS will not list a convertible debt security unless one of the following conditions is met: (i) The issuer of the debt security also has equity securities listed on the Exchange, NYSE Amex, the NYSE, or Nasdaq/NGM; (ii) an issuer of equity securities listed on the Exchange, NYSE Amex, the NYSE, or Nasdaq/NGM directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security, or has guaranteed the debt security; (iii) a nationally recognized securities rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or (iv) if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned an investment grade rating to an immediately senior issue or a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.[64] Therefore, the Commission has determined that BATS' listing standards for convertible debt are substantially similar to those of NYSE Amex.

F. Units

The listing requirements for units on Tier II of the Exchange, NYSE Amex, and Nasdaq/NGM are all the same, as each evaluates the initial and continued listing of a unit by looking to its components.[65] If all of the components of a unit individually meet the standards for listing, then the unit would meet the standards for listing.[66] Because the components for units

[52] *See* Proposing Release at 49702.

[53] *See* BATS Rule 14.9(d)(1)(A), (C) and (D).

[54] *See* Nasdaq Rule 5410(a), (c) and (d).

[55] *See* BATS Rule 14.9(d)(1)(B).

[56] *See* Nasdaq Rule 5410(b).

[57] *See also* Securities Act Release 8791, *supra* note 6 (determining that NCM initial listing standards, which are identical to BATS' standards for warrants on Tier II of the Exchange, are substantially similar to the Amex standards).

[58] *See* Proposing Release at 49702. *Compare* proposed BATS' Rule 14.9(g)(1) *with* Nasdaq Rule 5455(1) and (2).

[59] *Compare* BATS Rule 14.9(d)(3) *with* Nasdaq Rule 5725.

[60] BATS' rule requires a principal amount outstanding of at least $10 million for initial listing and $5 million for continued listing. *See* BATS Rule 14.9(d)(2)(A) and 14.9(g)(2)(A). NYSE Amex requires a principal amount outstanding of at least $5 million for initial listing and will consider delisting if the principal amount outstanding is less than $400,000 or if the issuer is not able to meet its obligations on the listed debt security. *See* Sections 104 and 1003 of the NYSE Amex Company Guide. As the Commission noted in a prior release, while these requirements are not identical, the Commission believes that both standards are designed to ensure the continued liquidity of the debt security, and, thus, are substantially similar. *See* Securities Act Release 8791, *supra* note 6, at 20412 (finding that an identical NCM listing standard was substantially similar to the Amex standard).

[61] Both BATS and NYSE Amex include an initial listing requirement that there be current last sale information available in the United States with respect to the underlying security into which the bond or debenture is convertible. *Compare* BATS Rule 14.9(d)(2)(B) *with* Section 104 of the NYSE Amex Company Guide. Additionally, Section 1003(e) of the NYSE Amex Company Guide states that convertible bonds will be reviewed when the underlying security is delisted and will be delisted when the underlying security is no longer the subject of real-time reporting in the United States. BATS' continued listing standards for a convertible debt security also require that current last sale information be available in the United States with respect to the underlying security, whereas NYSE Amex does not. *Compare* BATS Rule 14.9(g)(2)(C) *with* Section 1003(e) of the NYSE Amex Company Guide.

[62] BATS' standard requires at least three registered and active market makers for initial listing and two registered and active market makers for continued listing (one of which may be a market maker entering a stabilizing bid), whereas NYSE Amex requires one specialist to be assigned. *Compare* BATS Rule 14.9(d)(1)(C) *with* NYSE Amex Rule 104.

[63] NYSE Amex will not list a convertible debt issue containing a provision which gives an issuer discretion to reduce the conversion price unless the issuer establishes a minimum 10-day period within which such price reduction will be in effect. *See* Section 104 of the NYSE Amex Company Guide. The Commission believes that omission of such a provision does not impact its determination. *See* Securities Act Release Nos. 39542, *supra* note 6 (finding PCX listing standards to be substantially similar to Amex even with the absence of this provision); 8791, *supra* note 6, at 20412 (finding NCM's listing standard, which is identical to BATS' listing standard for convertible debt, was substantially similar to Amex even with the absence of this provision).

[64] These standards are identical to the initial listing standards for convertible debt securities on NYSE Amex and NCM). *Compare* BATS Rule 14.9(d)(2)(D)(iv) *with* Section 104(A)–(E) of the NYSE Amex Company Guide *and* Nasdaq Rule 5515(b)(4).

[65] A unit is a type of security consisting of two or more different types of securities (*e.g.,* a combination of common stocks and warrants). *See, e.g.,* Securities Exchange Act Release No. 48464 (September 9, 2003), 68 FR 54250 (September 16, 2003) (order approving NYSE Amex proposed rule change to amend Sections 101 and 1003 of the NYSE Amex Company Guide to clarify the listing requirements applicable to units).

[66] *See generally* BATS Rule 14.4, Section 101(f) of the NYSE Amex Company Guide, and Nasdaq Rule 5225.

proposed by BATS are substantially similar to those of a Named Market, as discussed above, the Commission has determined that BATS' listing standards for units to be listed on Tier II of the Exchange are substantially similar to a Named Market.[67]

The Commission is amending Rule 146(b) as proposed to reflect the following name changes:

- Sections (b)(1) and (b)(2) of Rule 146 use the term ''Amex'' to refer to the American Stock Exchange LLC. As noted above, on October 1, 2008, NYSE Euronext acquired Amex and renamed it NYSE Alternext.[68] Further, in 2009, NYSE Alternext was renamed NYSE Amex LLC.[69] The Commission is making a conforming change to Rule 146(b).
- Section (b)(1) of Rule 146 refers to ''the Philadelphia Stock Exchange, Inc.'' [70] On July 24, 2008, The NASDAQ OMX Group, Inc. acquired Phlx and renamed it ''NASDAQ OMX PHLX LLC.'' [71] The Commission is making a conforming change to Rule 146(b).

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 does not apply because the amendment to Rule 146(b) does not impose recordkeeping or information collection requirements or other collection of information, which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

IV. Economic Analysis

A. Introduction

Section 2(b) of the Securities Act [72] requires us, when engaging in rulemaking that requires the Commission to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have considered, and discuss below, the effects of the amendment to Securities Act Rule 146, with regard to BATS' listing standards to designate certain securities that will be listed, or authorized for listing, on BATS as Covered Securities, on efficiency, competition, and capital formation, as well as the benefits and costs associated with the rulemaking.

Congress amended Section 18 of the Securities Act to exempt covered securities from state registration requirements. These securities are listed on the Named Markets or any other national securities exchange determined by the Commission to have ''substantially similar'' listing standards to those of the Named Markets (''Designated Markets'').[73] Consistent with statutory authority, the Commission has determined that the listing standards for securities listed, or authorized for listing, on BATS are substantially similar to those of a Named Market, specifically Nasdaq/NGM or NYSE Amex. Securities listed, or authorized for listing, on BATS, therefore, will be exempt from state law registration requirements.

There are three Named Markets (NYSE, NYSE Amex, and Nasdaq/NGM) and currently five Designated Markets (Tier I of NYSE Arca, Tier I of the Philadelphia Stock Exchange, CBOE, ISE, and Nasdaq/NCM). NYSE and Nasdaq/NGM are currently the largest exchanges in terms of number of securities listed. As of April 19, 2011, in terms of securities listed, NYSE lists 3,255, Nasdaq/NGM lists 2,854, NYSE Arca lists 1,213, and NYSE Amex lists 544.[74]

The direct economic effect of the rule amendment will be to exempt issuers that list, or are authorized to list, on BATS from the requirements of state registration. Instead, these issuers will be required to comply with BATS' listing standards and the federal securities laws, rules and regulations with respect to the registration and sale of securities. The requirements of state registration typically include: (i) Paperwork and labor hours necessary to comply with state registration requirements, (ii) meeting the disclosure standards, and (iii) in some states, meeting certain minimum merit requirements to make public offerings.[75] The Commission solicited comments concerning the costs and benefits associated with the proposal, but received none.

The Commission believes that an indirect effect of the rule amendment will be that, by removing the requirements of state registration for issuers that list, or are authorized to list, on BATS—the same privilege granted to other Covered Securities—the rule can improve BATS' ability to compete effectively with other exchanges. Therefore, the Commission believes an important economic effect of the rule amendment can be to engender greater competition in the market for listing services.

Exchanges generally compete in multiple areas, which include the market for listing, the market for trading, and the market for order-flow. This rule amendment and BATS' listing standards [76] relate primarily to the market for listing, although the rule amendment and the entry of a new participant in the listings market could impact other markets as well.[77] In the market for listing, exchanges compete for issuers to list on their exchanges, so that the exchange may collect listing fees. Domestic exchanges face listing competition from other domestic exchanges and from foreign exchanges.[78] The benefit of listing for issuers generally is to gain greater access to capital through measures designed to help promote quality certification and visibility to public investors, which will generally result in a reduction in the cost of raising capital for these issuers. This access to capital may be further

[67] *See* Securities Exchange Act Release No. 64546, *supra* note 11, 76 FR 31660 at 31664.

[68] *See* Securities Exchange Act Release No. 58673, *supra* note 1.

[69] *See* Securities Exchange Act Release No. 59575, *supra* note 1.

[70] *See supra* note 10.

[71] On July 24, 2008, The NASDAQ OMX Group, Inc. acquired Phlx and renamed it ''NASDAQ OMX PHLX LLC.'' See Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31); and 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (SR–NASDAQ–2008–035).

[72] 15 U.S.C. 77b(b).

[73] *See* 15 U.S.C. 77r(b)(1)(B).

[74] These listed securities include exchange traded funds and multiple securities from the same issuer.

[75] It has been noted that the purpose of such review is ''to prevent 'unfair' and 'oppressive' offerings of securities,'' and, as of 2011, merit review is employed in about 30 states. *See* Jeffrey B. Bartell & A.A. Sommer, Jr., *Blue Sky Registration,* Securities Law Techniques (Matthew Bender ed., 2011). Typical elements of merit review include: offering expenses, including underwriter's compensation, rights of security holders, historical ability to service debt or pay dividends, financial condition of the issuer, cheap stock held by insiders, the quantity of securities subject to options and warrants, self-dealing and other conflicts of interest, and the price at which the securities will be offered. *See id.* Some merit regulation would be imposed on these issuers through application of exchange listing standards.

[76] *See* Securities Exchange Act Release No. 64546, *supra* note 11.

[77] *See, e.g.,* Thierry Foucault and Christine A. Parlour, *Competition for Listing,* 35 R and J. Econ. 329 (2004) (describing how listing fees and trading costs both affect firms' incentives to list with one exchange versus another).

[78] It has been noted that NYSE and the London Stock Exchange, for example, compete for listings of firms in third countries, in particular from emerging economies. *See* Thomas J. Chemmanur & Paolo Fulghieri, *Competition and Cooperation Among Exchanges: A Theory of Cross-Listing and Endogenous Listing Standards,* 82 J. Fin. Econ. 455, 456 (2006). *See generally* Craig Doidge, Andrew Karolyi, and René Stulz, *Has New York Become Less Competitive than London in Global Markets? Evaluating Foreign Listing Choices Over Time,* Journal of Financial Economics 91, 253–277 (2009); Craig Doidge, Andrew Karolyi, and René Stulz, *Why Do Foreign Firms Leave U.S. Equity Markets?,* Journal of Finance 65, 1507–1553 (2010); Caglio, Cecilia, Hanley, Kathleen Weiss and Marietta-Westberg, Jennifer, *Going Public Abroad: The Role of International Markets for IPOs* (March 16, 2010), *available at* SSRN: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1572949.* Additionally, differences in regulatory regimes may impact listing decisions.

enhanced through listing on particular exchanges, which could affect the level of investors' trust in a listed company's governance structure and the fairness of trading in the company's securities (through the perceived effectiveness of exchanges' conduct rules and surveillance of trading as well as other services and regulatory functions).

Exchanges may try to compete for issuers by reducing listing fees or by improving the quality of services they offer, or both. The cost of listing for an issuer includes listing fees and the cost of complying with listing standards. In principle, this means exchanges can compete by reducing listing fees, by relaxing the listing standards issuers must meet, or by offering several trading segments with different listing standards on each, though such standards must be determined to be substantially similar to a Named Market in order to get the benefit of the Securities Act Section 18(b)(1)(B) exemption from state registration requirements. The Commission believes that any concern that exchanges may try to compete by lowering the listing standards to attract issuers (and hence enter in a ''race-to-the-bottom'') is mitigated by the fact that (1) listing standards affect exchanges' reputations among investors, which, in turn, impacts their attractiveness to issuers, (2) any proposed listing standards or proposed changes to existing listing standards must be filed with the Commission pursuant to Section 19(b) of the Exchange Act and must meet its requirements to become effective,[79] and (3) lower listing standards that are not substantially similar to those of a Named Market will not have the benefit of the exemption from state registration requirements.[80]

The competition among exchanges for listings is only partially based on price. Exchanges also compete in various other areas, which contribute to the quality of the services listed issuers receive, including, but not limited to, provision of trade statistics, regulatory and surveillance services, access to new technology, attractive trading mechanisms, and marketing services.

One important dimension of competition is brand name.[81] Issuers place high value on being listed on certain exchanges because investors may more readily trust those exchanges, which may, in turn, reduce the cost of raising capital for those issuers. As a result, NYSE and Nasdaq/NGM, which are already the two largest exchanges in terms of securities listed, may be able to charge listing fees that are above marginal cost—that is, what it would cost them to list additional issuers—and higher than other competing exchanges; therefore, certain exchanges may earn economic rent from these higher listing premiums (the amount of fee difference certain exchanges can charge, above a competitor's price, because of its brand name). In addition to brand name recognition, the market for listing exhibits positive network externalities: issuers may prefer to be listed on exchanges where many other issuers are listed and where there are more intermediaries trading because of increased liquidity and visibility.[82] This indicates that, all else being equal, large exchanges (in terms of listings) will tend to be favored over smaller ones. In theory, this preference may persist to some extent even if large exchanges were to offer slightly inferior services than their smaller counterparts because the advantages of being listed on a large exchange, where there are many issuers and intermediaries, might outweigh the cost of being offered slightly inferior services. Because of these brand name effects and positive externalities, the Commission believes that the market for listings, to some extent, exhibits certain barriers to entry for new entrants to the listing markets, such as BATS.[83]

B. Benefits, Including the Impact on Efficiency, Competition, and Capital Formation

By exempting securities listed, or authorized for listing, on BATS from state law registration requirements, the Commission believes that issuers seeking to list securities on BATS could have the benefit of reduced regulatory compliance burdens, as compliance with state blue sky law requirements will not be required. One benefit of this amendment will be to eliminate these compliance burdens with respect to securities listed, or authorized for listing, on BATS. The Commission expects that the rule amendment can improve efficiency by eliminating duplicative registration costs for issuers and improving liquidity by allowing for greater market access to issuers who have not been listed previously.

To the extent that state merit reviews may have inhibited certain smaller businesses from making public offerings,[84] the Commission believes an exemption from state registration requirements will facilitate capital formation.

The Commission believes that the amendment to Rule 146(b) should permit BATS to better compete for listings with other markets whose listed securities already are exempt from state law registration requirements, and the Commission believes that this result can enhance competition, thus benefiting market participants and the public. Specifically, BATS currently intends to enter the listing market with generally lower fees than incumbent exchanges in

[79] Any revision to exchange listing standards must be done in accordance with Section 19(b) of the Exchange Act and Rule 19b–4 thereunder. Any Commission approval of a listing standard revision is conditioned upon a finding by the Commission that the revision is consistent with the requirements of the Exchange Act and rules thereunder. *See* 15 U.S.C. 78s.

[80] *See* Chemmanur & Fulghieri, *supra* note 74, at 458.

[81] *See generally* Clement G. Krouse, *Brand Name as a Barrier to Entry: The Rea Lemon Case,* 51 Southern Econ. J. 495 (1984) (describing the effect of brand name on competition in markets with incomplete information); *see also* Tibor Scitovsky, *Ignorance as a Source of Oligopoly Power,* 40 Amer. Econ. Rev. 48, 49 (1950) (''An ignorant buyer * * * is unable to judge the quality of the products he buys by their intrinsic merit. Unable to appraise products by objective standards, he is forced to base his judgment on indices of quality, such as * * * general reputation of the producing firms.'').

[82] *See, e.g.,* Carmine Di Nola, *Competition and Integration Among Stock Exchanges in Europe: Network Effects, Implicit Mergers and Remote Access,* 7 European Fin. Man. 39 (2001) (''Firms may derive more utility in being listed on exchanges where there are more intermediaries as they give more liquidity to the market.'').

[83] Brand name recognition is frequently recognized as a barrier to entry mainly because consumers do not have all the information regarding product quality and thus tend to rely on brand names as a proxy for quality. *See, e.g., Brand Name as a Barrier to Entry: The Rea Lemon Case,* 51 S. Econ. J. 495 (1984); Tibor Scitovsky, *Ignorance as a Source of Oligopoly Power,* 40 Amer. Econ. Rev. 48 (1950). Network externalities are also recognized as a barrier to entry. *See, e.g.,* Gregory J. Weden, *Network Effects and Conditions of Entry: Lessons from the Microsoft Case,* 69 Antitrust L.J. 87 (2001); Douglas A. Melamed, *Network Industries and Antitrust,* 23 Harv. J. L. & Pub. Pol'y 147 (1999).

[84] A number of scholarly articles have expressed concerns over the possibility for blue sky merit regulation to hinder capital formation. *See, e.g.,* Martin Fojas, *Ay Dios NSMIA!: Proof of a Private Offering Exemption Should Not Be a Precondition for Preempting Blue Sky Law Under the National Securities Markets Improvement Act,* 74 Brooklyn L. Rev. 477 (2009); Rutheford B. Campbell, Jr., *Blue Sky Laws and the Recent Congressional Preemption Failure,* 22 J. Corp. L. 175 (1997); Brian J. Fahrney, *State Blue Sky Laws: A Stronger Case for Federal Pre-Emption Due to Increasing Internationalization of Securities Markets,* Comment, 86 Nw. U. L. Rev. 753 (1991–92); Roberta S. Karmel, *Blue-Sky Merit Regulation: Benefit to Investors or Burden on Commerce,* 53 Brook. L. Rev. 106 (1987–88). While the concerns are numerous, other studies have shown some positive effect of merit regulation. *See* Jay T. Brandi, *The Silverlining in Blue Sky Laws: The Effect of Merit Regulation on Common Stock Returns and Market Efficiency,* 12 J. Corp. L. 713 (1986–87) (reporting that merit regulation can have a positive effect on investor returns); Ashwini K. Agrawal, ''The Impact of Investor Protection Law on Corporate Policy: Evidence from the Blue Sky Laws,'' working paper (2009) (reporting that the passage of investor protection statutes causes firms to pay out greater dividends, issue more equity, and grow in size), *available at http://ssrn.com/abstract=1442224.* Some merit regulation would be imposed on these issuers through application of exchange listing standards.

order to compete with them.[85] In response to BATS' entry, although recognizing the significant barriers to entry noted above, the incumbent exchanges might choose to reduce their listing fees to match or come closer to those proposed by BATS. Incumbent exchanges might also enhance the other services they provide to their currently listed issuers (*e.g.,* regulatory and surveillance services, access to new technology, attractive trading mechanisms, marketing services) as a way to counteract BATS' lower listing fees.

The Commission believes that additional competition in the market for listings can enable some issuers, both public and private, that have (1) either not listed on any exchange or (2) have listed on an exchange but have chosen not to list on certain exchanges because of the costs of listing there, to list on any Named or Designated Market due to the potential for lower listing fees across all exchanges. The Commission further believes that this will result in a lower cost of capital for those issuers that previously had not listed on an exchange and could benefit the current investors in such issuers in the form of higher company value arising from the reduced cost of capital and increased liquidity. Since currently unlisted firms may be able to list because of lower listing fees, the Commission believes this may improve efficiency and capital formation since future investors in these issuers would have easier access to invest in them and to further diversify their investment portfolios.

The Commission believes that those issuers that are currently listed on an exchange, including the Named Markets, and that remain listed there, can potentially benefit from any reduced listing fees; however, because any such benefit will come at the expense of the exchange on which they are listed in the form of potentially reduced profit, this aggregate effect would be a transfer from one group of investors (exchange shareholders) to another group of investors (listed issuer shareholders).

Additionally, the Commission believes that some issuers currently listed on other Named or Designated Markets could potentially switch their listings to BATS, thus potentially lowering their listing costs (provided the Named or Designated Markets do not reduce their listing fees). The size of any such potential benefit will depend on how large any cost savings due to listing on BATS would be in comparison to the cost of giving up any valuable services that the other exchanges might provide that BATS might not. In addition, the behavior of these issuers will depend heavily on the extent to which these other exchanges respond to BATS' entry by making themselves more competitive to the issuers.

C. Costs, Including the Impact on Efficiency, Competition, and Capital Formation

The rule amendment will eliminate state registration requirements for securities listed, or authorized for listing, on BATS. The Commission notes that there may be certain economic costs to investors through the loss of benefits of state registration and oversight. For example, by listing on BATS, issuers will no longer be required to comply with certain states' blue sky laws, which could mandate more detailed disclosure than BATS' listing standards and the requirements imposed pursuant to the federal securities laws, rules, and regulations. In such circumstances, investors could lose the benefit of the additional information. Additionally, to the extent blue sky laws result in additional enforcement protections in the form of another regulator policing issuer activity, then investors from these states could incur costs when issuers choose to list on BATS. Some researchers have also expressed a concern that the exemption from blue sky laws could prompt riskier public offerings.[86]

From the perspective of competition in the market for listing, the Commission notes that there could be a concern that, to the extent the market for exchange services exhibits network effects, as explained above, there could be a loss in efficiency as a result of having a greater number of networks, if one or more of the existing large exchanges (in terms of listings) shrinks in size. However, the Commission also notes that the overall efficiency effect will depend on the precise fragmentation of the exchanges. It is possible, for instance, that, through specialization of exchanges, there could be an efficiency gain from having more distinct exchanges, each of which specializes in listing issuers from certain types of industries.

The Commission acknowledges that these costs are difficult to quantify. The Commission believes that Congress contemplated these costs in relation to the economic benefits of exempting Covered Securities from state regulation. The rule amendment otherwise imposes no recordkeeping or compliance burdens, but will provide a limited purpose exemption under the federal securities laws. The Commission solicited comments on the rule amendment's effect on competition, efficiency, and capital formation, but received none. Thus, the Commission believes that the amendment to Rule 146(b) should not impair efficiency, competition, and capital formation.

V. Regulatory Flexibility Act Certification

The Commission certified, pursuant to Section 605(b) of the Regulatory Flexibility Act,[87] that the amendment to Rule 146 will not have a significant economic impact on a substantial number of small entities. This certification was included in the Proposing Release.[88] The Commission solicited comments as to the nature of any impact on small entities, and generally on whether the amendment to Rule 146(b) could have an effect that has not been considered. No comments on these issues were received.

VI. Statutory Authority and Text of the Rule

The Commission is adopting an amendment to Rule 146 pursuant to the authority of Section 19(a) of the Securities Act of 1933[89] particularly Sections 18(b)(1)(B) and 19(a).[90]

List of Subjects in 17 CFR Part 230

Securities.

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

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 111–203, § 939A, 124 Stat. 1376, (2010) unless otherwise noted.

* * * * *

■ 2. Section 230.146 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

[85] *See* Securities Exchange Act Release No. 64546, *supra* note 11, 76 FR at 31666 & n. 27–28 (representing that BATS' pricing, while not necessarily cheaper for all issuers at all other markets, is roughly equivalent to or less than the price issuers would pay at other exchanges, including NGM and NCM).

[86] *See, e.g.,* Brandi, *supra* note 84.

[87] 5 U.S.C. 605(b).

[88] *See* Proposing Release at 49706.

[89] 15 U.S.C. 77a *et seq.*

[90] 15 U.S.C. 77r(b)(1)(B) and 77s(a).

§ 230.146 Rules under section 18 of the Act.

* * * * *

(b) * * *

(1) For purposes of Section 18(b) of the Act (15 U.S.C. 77r), the Commission finds that the following national securities exchanges, or segments or tiers thereof, have listing standards that are substantially similar to those of the New York Stock Exchange (''NYSE''), the NYSE Amex LLC (''NYSE Amex''), or the National Market System of the Nasdaq Stock Market (''Nasdaq/NGM''), and that securities listed, or authorized for listing, on such exchanges shall be deemed covered securities:

(i) Tier I of the NYSE Arca, Inc.;

(ii) Tier I of the NASDAQ OMX PHLX LLC;

(iii) The Chicago Board Options Exchange, Incorporated;

(iv) Options listed on the International Securities Exchange, LLC;

(v) The Nasdaq Capital Market; and

(vi) Tier I and Tier II of BATS Exchange, Inc.

(2) The designation of securities in paragraphs (b)(1)(i) through (vi) of this section as covered securities is conditioned on such exchanges' listing standards (or segments or tiers thereof) continuing to be substantially similar to those of the NYSE, NYSE Amex, or Nasdaq/NGM.

* * * * *

By the Commission.

Dated: January 20, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–1521 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

[Docket No. FDA–2011–N–0003]

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin and Betamethasone Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the original approval of an abbreviated new animal drug application (ANADA) filed by Sparhawk Laboratories, Inc. The ANADA provides for the veterinary prescription use of gentamicin sulfate and betamethasone valerate topical spray in dogs.

DATES: This rule is effective January 25, 2012.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–170), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (240) 276–8197, email: *john.harshman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215, filed ANADA 200–416 that provides for veterinary prescription use of Gentamicin Topical Spray (gentamicin sulfate and betamethasone valerate) in dogs. Sparhawk Laboratories, Inc.'s Gentamicin Topical Spray is approved as a generic copy of Intervet, Inc.'s GENTOCIN Topical Spray, approved under NADA 132–338. The ANADA is approved as of November 10, 2011, and the regulations are amended in 21 CFR 524.1044f to reflect the approval and revised terminology in the indication.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The Agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1044f [Amended]

■ 2. In § 524.1044f, revise paragraphs (b) and (c)(2) to read as follows:

§ 524.1044f Gentamicin and betamethasone spray.

* * * * *

(b) *Sponsors.* See Nos. 000061, 054925, 058005, 058829, and 065531 in § 510.600(c) of this chapter.

(c) * * *

(2) *Indications for use.* For the treatment of infected superficial lesions caused by bacteria susceptible to gentamicin.

* * * * *

Dated: January 19, 2012.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 2012–1501 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–5156–F–02]

RIN 2502–AI58

Federal Housing Administration (FHA) Single Family Lender Insurance Process: Eligibility, Indemnification, and Termination

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates and enhances the Lender Insurance process, through which the majority of Federal Housing Administration (FHA)-insured mortgages are endorsed for insurance. These changes also further HUD efforts to improve and expand the risk management activities of the FHA. This final rule follows the publication of an October 8, 2010, proposed rule, and takes into consideration public comments received in response to it.

DATES: *Effective Date:* February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Room 9278, Washington, DC 20410–8000; telephone number (202) 708–4308 (this is not a toll-free number). Persons with hearing or speech impairments may access these

numbers through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 8, 2010, at 75 FR 62335, HUD published for public comment a proposed rule to update and enhance the Federal Housing Administration (FHA) Lender Insurance Process. FHA-insured single family mortgages are originated and underwritten through the Direct Endorsement process. A majority of FHA-insured mortgages that are originated and underwritten under the Direct Endorsement process are endorsed for insurance by mortgagees through the Lender Insurance process. Under Direct Endorsement, the mortgagee first determines that the proposed mortgage is eligible for insurance under applicable regulations, and then submits the required documents to FHA for a pre-endorsement review. Direct Endorsement mortgagees that meet the requirements may be approved for Lender Insurance. The Lender Insurance process enables mortgagees approved for the Direct Endorsement process to insure single family mortgages originated and underwritten through the Direct Endorsement process without first submitting documents to FHA. Under the Lender Insurance process, a mortgagee conducts its own pre-insurance review and insures the mortgage without a pre-endorsement review by FHA. In order to be eligible to participate in the FHA single family programs as a Lender Insurance mortgagee, a mortgagee must be an unconditionally approved Direct Endorsement mortgagee that is high performing. The Lender Insurance process is authorized under section 256 of the National Housing Act (12 U.S.C. 1715z–21). The HUD regulations that presently govern the Direct Endorsement and Lender Insurance processes are codified at 24 CFR part 203 (entitled Single Family Mortgage Insurance).

The October 8, 2010, proposed rule furthered HUD efforts to improve and expand the risk management activities of the FHA. The proposed regulatory changes were designed to update and enhances the Lender Insurance process, through which the majority of FHA-insured mortgages are endorsed for insurance. Most significantly, the proposed rule provided additional guidance on HUD's regulations implementing the statutory requirements regarding mortgagee indemnification to HUD of insurance claims in the case of fraud, misrepresentation, or noncompliance with applicable loan origination requirements. Other proposed regulatory changes addressed the frequency and methodology of HUD's review of mortgagee Lender Insurance performance, and the approval process for Lender Insurance mortgagees that have undergone a corporate restructuring. The Department also took the opportunity afforded by the proposed rule to solicit public comment on whether FHA mortgagees should be required to submit mortgage loan case binders to HUD electronically. Interested readers should refer to the preamble to the October 8, 2010, proposed rule for additional information on the proposed regulatory changes to the Lender Insurance process.

II. This Final Rule; Changes to the October 8, 2010, Proposed Rule

This final rule follows publication of the October 8, 2010, proposed rule and takes into consideration the public comments received on it. The public comment period on the proposed rule closed on December 7, 2010, and HUD received a total of 13 public comments. Comments were submitted by mortgagees, mortgage lending associations, and private citizens. Most of the public comments pertained to the provisions of the proposed rule concerning indemnification.

After careful consideration of the issues raised by the commenters, HUD has decided to adopt an amended version of the proposed rule. Specifically, HUD has made the following changes to the October 8, 2010, proposed rule:

1. *Frequency of HUD review.* This final rule clarifies that, consistent with reviews of mortgagee performance under the Credit Watch Termination Initiative, HUD will review Lender Insurance mortgagee performance on an ongoing (as opposed to ''continual'' basis).

2. *Scope of termination.* The final rule clarifies that the automatic termination of a mortgagee's Lender Insurance authority under § 203.4(d)(3) is limited to actions taken at the institution level of the mortgagee, as opposed to its branches.

3. *Knowing standard for indemnification in the case of fraud or misrepresentation.* The final rule provides that a mortgagee shall indemnify HUD for an insurance claim if the mortgagee ''knew or should have known'' that fraud or misrepresentation was involved.

4. *Reinstatement process.* The final rule provides that mortgagees whose Lender Insurance authority has been terminated may apply for reinstatement in accordance with procedures closely modeled on the existing procedures for a mortgagee seeking reinstatement following termination of its origination approval agreement or Direct Endorsement authority.

As already noted, the October 8, 2010, proposed rule invited public comment on whether FHA mortgagees should be required to submit mortgage loan case binders to HUD electronically. This final rule does not revise the FHA recordkeeping and reporting requirements, but HUD will consider the comments received on this issue on any future rulemaking addressing the electronic submission of case binders.

III. Discussion of Public Comments Received on the October 8, 2010, Proposed Rule

The following section of the preamble presents a summary of the significant issues raised by the public comments in response to the October 8, 2010, proposed rule, and HUD's responses to these issues.

A. Lender Indemnification for Insurance Claims

Comment: A 5-year indemnification period starting with insurance endorsement is too long for indemnifications demanded for serious and material violations of FHA origination requirements. Several commenters wrote that the proposed 5-year period for indemnification should be shortened. Commenters wrote that problems occurring more than 2 or 3 years after origination are most commonly due to life events such as loss of employment, divorce, or death, rather than decisions made at origination. The majority of commenters who proposed a shortened time frame suggested a period of 2-to-3 years after insurance endorsement. Commenters wrote that based on their experience, the 2-year time frame would be sufficient to identify serious or material issues occurring in the origination of mortgage loans, to identify defects stemming from the underwriting of mortgage loans, and to determine whether lender error occurred. One commenter wrote that HUD's origination guidelines in Handbook 4155.1 instruct lenders to establish income analysis on continuance for 3 years. The commenter wrote that lenders should not be held culpable beyond HUD's own established credit policy.

HUD Response. HUD has not amended the rule based on these comments. Indemnification for 5 years

from the date of insurance endorsement is the current standard practice for indemnification in connection with other serious mortgagee program violations, and the adoption of a lesser standard for Lender Insurance would be inconsistent with proper risk management practices. HUD continues to believe that the 5-year period is consistent with the twin policy objectives of providing HUD sufficient opportunity to determine whether there was a serious and material noncompliance issue that rendered the loan ineligible for insurance, while at the same time ensuring that mortgagees are not burdened with the possibility of indemnification due to noncompliance for a mortgage loan endorsed more than 5 years ago.

Comment: Indemnification should be limited to those cases where origination deficiencies caused default. Several commenters wrote that HUD should seek indemnification only in circumstances where an origination deficiency directly caused the default. Commenters expressed concern that FHA may seek indemnification due to small or irrelevant deficiencies in origination if a clear causation standard is not in place. Commenters wrote that a civil money penalty would be a more appropriate penalty than indemnification for loan origination deficiencies not directly related to the mortgage default.

HUD Response. HUD has not amended the rule based on these comments. Current standard practice for indemnification requests is not based on causation connection between the violation and the default, and the adoption of a lesser standard for Lender Insurance would be inconsistent with proper risk management practices. Furthermore, HUD has made it clear that indemnification will be demanded only in cases of serious and material violations of HUD requirements. HUD intends to demand indemnification for loans where fraud, misrepresentation, or serious and material noncompliance are such that the loans were *ineligible* for insurance. Creating a causation standard (connecting the default to the violation) is unnecessary since FHA should not have incurred the insurance obligation in the first place.

Comment: Proposed bases for indemnification are overly broad. Several commenters wrote that the bases by which HUD may seek indemnification described by the proposed rule are overly broad. The commenters wrote that the proposed bases are subjective and may deter mortgagees from participating in the FHA program or may increase the costs and fees to consumers, because mortgagees absorb the potential for future increased liability. Commenters requested that HUD provide more specific examples illustrating the scenarios under which indemnification may be sought.

HUD Response. HUD has not amended the rule based on these comments. HUD believes that the regulatory language is clear, consistent with current standard practice, and covers the types of violations that are considered serious and material (i.e., ones where the mortgage never should have been endorsed by the lender because FHA would not have insured the mortgage under the Direct Endorsement process). HUD will issue additional guidance regarding the bases for indemnification should it determine such clarification is necessary.

Comment: An indemnification appeals process is necessary. Several commenters wrote that mortgagees should be provided an opportunity to appeal HUD demands for indemnification. Commenters wrote that mortgagees should be afforded the opportunity to present to HUD information and clarifications that may not have been available at the time for indemnification was issued.

HUD Response. HUD has not amended the rule in response to these comments. HUD notes that the means by which fraud or misrepresentation, or serious and material violations of FHA requirements for purposes of the new regulatory indemnification requirements will be identified in accordance with current standard practice; namely, post endorsement technical reviews, quality assurance monitoring reviews, lender self-reports, Office of Inspector General audits, and investigations, etc. These processes afford mortgagees ample opportunities for meaningful discussion and the submission of additional information.

Comment: HUD should clarify the rule's effect on purchasers and servicers of FHA loans. One commenter requested that HUD provide additional clarification of the term ''origination,'' by assuring that purchasers or servicers of FHA-insured loans will not be impacted by the proposed indemnification changes. The commenter also requested that HUD make clear the effective date of the indemnification provisions.

HUD Response. Purchasers or servicers of FHA-insured loans will *not* be impacted by the indemnification changes. As with existing standard practice for indemnification agreements, FHA will pay insurance benefits to the servicer or holder of the mortgage, as long as they are not the same entity that was named in the indemnification agreement. The indemnification provisions will apply to all demands for indemnification issued on or after the effective date of this final rule.

Comment: Causation and materiality standards for indemnification based on fraud and misrepresentation may be unequal. Several commenters wrote that mortgagees should not be held to a higher standard for fraud or misrepresentation than for serious and material origination violations. These commenters urged HUD to limit the indemnification requirement regarding fraud or misrepresentation to instances where the mortgagee knew, or should have known, of the fraud or misrepresentation. The commenters also suggested that HUD limit the indemnification requirement to those instances involving ''material'' misrepresentation.

HUD Response: HUD has amended the rule based on this comment, and to conform to HUD's existing practice regarding indemnification agreements. As with existing standard practice, the final rule reflects that HUD will demand indemnification for cases where the mortgagee knew or should have known of the fraud or misrepresentation.

Comment: FHA mortgage loans receiving an Accept/Approve recommendation from FHA's TOTAL Scorecard should not be subject to indemnification. Several commenters wrote that loans receiving an Accept/Approve recommendation from FHA's TOTAL Scorecard should be excluded from the indemnification provisions. These commenters wrote that, in the case of loans approved by this system, the mortgagee is responsible only for data integrity and not for the creditworthiness of the mortgage loan.

HUD Response. HUD has not amended this rule based on this comment. HUD's current regulations provide that mortgagees are responsible for verifying a borrower's creditworthiness, irrespective of the results derived from the use of TOTAL. Specifically, CFR 203.254(t) provides that ''TOTAL is a tool to assist the mortgagee in managing its workflow and expediting the endorsement process, and *is not a substitute for the mortgagee's reasonable consideration of risk and credit worthiness.* Direct Endorsement mortgagees using TOTAL remain solely responsible for the underwriting decision'' (emphasis added). The indemnification provisions of this final rule merely emphasize a lender's existing responsibility for verifying a borrower's creditworthiness. In particular, § 203.255(g)(3)(i) of this

final rule (adopted without change from the proposed rule) provides that it is a serious and material violation for a lender to fail to verify the creditworthiness, income, and/or employment of the mortgagor in accordance with FHA requirements.

Receiving an Approve/Accept risk recommendation from TOTAL does not absolve mortgagees of their responsibility to consider information beyond that considered by TOTAL, as well as their responsibility for the decisions to approve and close loans or to endorse loans through the Lender Insurance process. Regardless of the risk assessment provided, the mortgagee remains accountable for compliance with FHA regulations, guidelines, and eligibility requirements, as well as for any credit, capacity, and documentation requirements described in the current version of HUD Handbook 4155.1, Mortgage Credit Analysis, and applicable mortgagee letters and other policy directives.

B. Acceptable Claim and Default Rate for Lender Insurance Mortgagees

Comment: Clarify the impact of the methodology of claim and default rate for national lenders and those operating in multiple states. Several commenters requested that HUD address the impact of the revision to the methodology used to determine Lender Insurance eligibility on mortgagees operating on a nationwide basis. Specifically, the commenters requested clarification as to whether the claim and default rate of national mortgagees would be judged solely against those of other national mortgagees and if a nationwide mortgagee's claim and default rate in a particular geographic region or state would be compared to the claim and default rates of other mortgagees in that region or state. The commenters recommended that a national mortgagee be eligible for Lender Insurance authority if it maintains a claim and default rate at or below 150 percent of the FHA national program average.

Other commenters requested that HUD address how the claim and default rate of a mortgagee operating in more than one state, but not nationwide, will be compared. Commenters requested that HUD describe whether the rate will be compared on a state-by-state basis or using a weighted average. Several commenters suggested that HUD use a state-by-state comparison, which would consider only those states where the mortgagee has originated a meaningful number of loans in the past 2 years in proportion to the mortgagee's total number of originations. Such a process, they wrote, would prevent an unfair denial or loss of Lender Insurance approval based on a small number of loans and defaults originated in one state. Commenters further suggested that HUD eliminate from consideration any state in which the total number of originations made in the past 2 years is equal to, or less than, 5 percent of the mortgagee's total originations.

HUD Response. HUD has not amended the rule based on these comments. To be eligible to participate in the Lender Insurance program, a mortgagee must have a claim and default rate at or below 150 percent of the average rate for all of the states in which it does business. In determining eligibility for Lender Insurance, HUD will compare the percentage of all claims and defaults on loans underwritten by that mortgagee to the percentage of claims and defaults for all loans underwritten in the states in which that mortgagee does business.

Comment: Request for clarification regarding applicable comparison ratios. One commenter requested clarification that the comparison ratio used will be the 2-year default and claim ratio, rather than the one-year ratio. The commenter requested further clarification as to which ratio, among those available through the Neighborhood Watch system, will be utilized in the comparison.

HUD Response. HUD is using the 2-year period for determining the claim and default compare ratio, which is the standard used for determining ongoing eligibility to participate in FHA programs. As in the current process, HUD will consider those endorsed loans underwritten by the lender with a beginning amortization date within the 2-year period of analysis. Further, HUD will also analyze these loans to determine claims and defaulted loans from the total number of loans underwritten.

Comment: Concerns regarding maintaining acceptable claim and default rates for Lender Insurance mortgagees. Several commenters expressed concern regarding the proposed requirement that mortgagees maintain the initial claim and default rate necessary for Lender Insurance approval to retain eligibility for Lender Insurance. Commenters wrote that the proposed standard fails to recognize the current volatility of the housing market, and could negatively impact mortgagees approved during periods of exceptional economic and industry performance. Commenters requested that HUD consider several different proposals. These commenter suggestions included a proposal that national mortgagees remain eligible for Lender Insurance if they maintain claim and default rates at or below 150 percent of the FHA national program averages. Another proposal would establish default rate goals rather than comparison ratios. Other commenters suggested that HUD establish separate standards based on borrower or loan characteristics that would enable mortgagees to responsibly lend to all segments of the population. One commenter wrote that Lender Insurance status should not be jeopardized by a short period of noncompliance that could result from a statistical anomaly.

HUD Response. HUD has not amended the rule based on these comments. HUD believes that mortgagees should maintain the claim and default rate needed for eligibility and that setting a more lenient standard for retaining Lender Insurance authority is not acceptable from a risk management perspective. HUD also believes that comparing each mortgagee's claim and default rate only to that of those states where it does business will prevent the kind of statistical anomalies of concern to the commenters. Currently, the option to obtain the compare ratio for all states in which a mortgagee does business is available in Neighborhood Watch. Mortgagees are able to compare their claim and default rate for all states in which they do business to the overall claim and default rate for those same states. HUD's Lender Insurance Guide will be updated to provide further clarification and to describe any enhancements to Neighborhood Watch necessary to accomplish this comparison. The Lender Insurance Guide is available for download at *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12648.pdf.*

Comment: Requested clarification of ''continual'' HUD review of acceptable claim and default rates. Several commenters wrote that HUD's proposed ''continual'' review standard is vague due to the failure to describe the time period of review. One commenter noted that data is refreshed on a monthly basis, and asked if this implies that HUD would evaluate mortgagee claim and default rates on a monthly basis. Commenters also wrote that the proposed standard does not provide mortgagees with the opportunity to make self-imposed corrections to rectify problems identified by their own monitoring systems, or provide them with a cure period to correct deficiencies identified by HUD. Some commenters recommended that FHA maintain its current policy of yearly review. Many commenters requested that HUD define ''continual'' to enable

mortgagees to plan appropriately for any resulting additional costs and staffing requirements.

HUD Response. HUD has not revised the substance of this provision in response to the comments. HUD reserves the right to monitor the performance of Lender Insurance mortgagees on a continual basis. HUD must be able to respond quickly to poor mortgagee performance in order to fulfill its statutory obligation to safeguard the FHA mortgage insurance funds. Moreover, such ongoing review is consistent with the wording of the Department's regulations for the monitoring of mortgagee performance under the FHA Credit Watch Termination Initiative (see 24 CFR 202.3(c)(2), which states that HUD will review the performance of mortgagees ''on an ongoing basis''). That said, this final rule makes one minor change to the wording of this provision for the sake of consistency with the Credit Watch Termination Initiative. It adopts the language used in § 202.3(c) by referring to monitoring on an ''ongoing basis.''

C. Other Proposed Rule Changes

Comment: Concerns regarding termination of Lender Insurance authority. Several commenters expressed concern about the proposed regulatory changes pertaining to the termination of Lender Insurance authority. The commenters requested that HUD provide specific grounds that would trigger termination, and clarify that FHA will repeal a mortgagee's Lender Insurance authority only for material adverse actions. The commenters requested that HUD remove the word ''any'' when describing the specific grounds for terminations. Commenters wrote that use of the word ''any'' could imply that a lender's authority could be terminated for a minor or trivial action. Commenters also suggested that mortgagees be provided an opportunity for an informal conference prior to issuance of a termination notice. Commenters further wrote that mortgagees be provided a cure period for offenses that could jeopardize a mortgagee's Lender Insurance authority.

HUD Response. HUD agrees with the commenters that examples and guidance can be particularly helpful in regard to the policies and procedures affecting the termination and reinstatement of Lender Insurance authority. To that end, HUD has issued its Lender Insurance Guide to assist lenders, HUD staff, and contractors who participate in the pre-insurance review, post endorsement technical review, and appraisal review processes. The Lender Insurance Guide, which is available for download at *http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12648.pdf*, also provides examples of actions that will trigger termination.

Moreover, and as noted above in this preamble, this final rule brings additional clarity to the Lender Insurance process by codifying a process for the reinstatement of mortgagees who have had their Lender Insurance process terminated. The reinstatement procedures are closely modeled on the existing reinstatement process for a mortgagee seeking reinstatement following termination of its origination approval agreement or Direct Endorsement authority codified at 24 CFR 202.3(e). The use of the existing process has the benefit of already being familiar to lenders and HUD staff, and obviates the need for meeting new paperwork and other regulatory requirements.

Consistent with the current reinstatement process at 24 CFR 202.3(e)(1)(i), this final rule provides that a mortgagee whose Lender Insurance authority is terminated must wait at least 6 months following termination to apply for reinstatement. In addition to addressing the criteria for Lender Insurance approval specified in § 203.4, the application for reinstatement must be accompanied by a corrective action plan addressing the issues resulting in the termination of the mortgagee's Lender Insurance authority, along with evidence that the mortgagee has implemented the corrective action plan. The requirement for a corrective action plan tracks the similar requirement for reinstatement of Direct Endorsement and origination approval at 24 CFR 202.3(e)(2)(iii). HUD may grant the mortgagee's application for reinstatement if the mortgagee's application is complete and HUD determines that the underlying causes for the termination have been satisfactorily remedied. Mortgagees are reminded that the Lender Insurance Program is a process for endorsing loans for insurance only. Termination of this authority does not impact a mortgagee's ability to seek insurance for a loan originated in accordance with FHA guidelines.

Comment: Procedures governing Lender Insurance approval in instances of merger, acquisition, or restructuring. Commenters welcomed the proposed provisions regarding merged, acquired, or restructured mortgagees. Several commenters also requested that HUD reconsider regulatory waivers as a means to address situations where a newly reorganized corporate entity may merit Lender Insurance approval but not meet the proposed regulatory standards.

HUD Response. HUD appreciates the support of commenters on this issue. HUD notes that the phrase ''merger, acquisition, or reorganization'' would include changes among parent companies and their subsidiaries. As noted in the preamble to the proposed rule, HUD's goal in crafting the regulatory language is to limit the need for regulatory waivers.

D. Mandatory Electronic Submission of Case Binders

Comment: Use of mandatory electronic submission of case binders. Several commenters supported the electronic submission of case binders, writing that the proposed requirement will make the FHA insurance process more efficient. Commenters, however, wrote that electronic submission of case files should include only those files selected for technical review at HUD's request rather than for all files related to FHA-insured loans. The commenters wrote that requiring submission of all loan files would be costly and would provide FHA with more information than it could substantively review. Some of the commenters were particularly concerned about the impact on smaller mortgage banks and correspondents. These commenters wrote that HUD should consider the readiness of the industry to implement the requirement prior to setting a specific implementation date.

HUD Response. While HUD appreciates the comments received on this issue, this final rule does not revise the FHA recordkeeping and submission requirements. HUD is further considering the issue of electronic submission of case binders, including the concerns expressed by the commenters. As noted earlier, these comments will be addressed in any future rulemaking regarding electronic case binder submission.

IV. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Order). This final rule modifies 3 existing areas affecting FHA-approved lenders. First, this rule imposes

indemnification provisions on all approved mortgagees with Lender Insurance authority. Second, this rule amends the methodology and requirements for determining an acceptable claim and default rate. Lastly, this final rule amends the 2-year historical performance requirement for mortgagees resulting from merger, acquisition, or reorganization. Other provisions of this rule describe clarifying or technical changes that would not produce an economic impact. HUD's analysis indicates that these regulatory amendments will not have an economic effect of greater than $100 million and thus do not require a regulatory impact analysis. The findings of HUD's analysis are summarized below:

1. *Indemnification requirements.* With regard to indemnification, this final rule contains much of the existing practice and should not result in a dramatic change in underwriting practices and the quality of FHA loans, assuming that all of FHA's direct endorsement lenders currently conduct due diligence in extending FHA-insured loans. There will be marginal change for those lenders with ineffective risk management practices and those lenders that have refused to execute an indemnification agreement; such lenders may elect instead to attempt to negotiate a settlement with HUD's Mortgagee Review Board.

The primary change is that all direct endorsement lenders with lender insurance authority will be subject to indemnification procedures and will not be able to negotiate the settlement as is the current practice. This facet of the rule could lead to an efficiency: The initial process by a lender of deciding whether to indemnify FHA will be eliminated, along with eliminating the length and cost of negotiations. Time and effort may be saved because the costs of a lengthy preparation for both FHA and the lender in coming before the Mortgage Review Board are reduced by this final rule. On the other hand, the elimination of the lender's option to challenge the indemnification before the Mortgage Review Board could lead to greater expenses for those cases that would have been dismissed under the current practice.

The average over the last 7 years is 1,282 indemnification agreements annually. Refusals to execute an indemnification agreement are rare. If the average negotiation costs are 2 percent of loan amount for both FHA and lender (approximately $140,000 is the average FHA-insured mortgage amount), then the transaction costs to avoid or delay the indemnification would be $2,800 per loan. Over an average of 1,300 indemnifications, and assuming that 5 percent initially refuse to indemnify, the aggregate transaction costs saved by this rule would be $182,000.

2. *Acceptable Claim and Default Rate.* The final rule makes two changes regarding acceptable claim and default rates for Lender Insurance mortgagees. First, the rule more accurately evaluate a mortgagee's performance record by basing the claim and default-rate comparison on the mortgagee's actual area of operations. The rule also clarifies that, in order to retain their Lender Insurance authority, mortgagees must maintain the acceptable claim and default rate required of them when they were initially delegated such authority.

These regulatory changes will accurately evaluate a mortgagee's performance record by basing the claim and default rate comparison on the mortgagee's actual area of operations. This will likely lead to an increase in opportunity for some lenders but may lead to a decrease for others. It is difficult to know what the net effect of these regulatory changes on lenders will be. Some will be excluded and others will be included, depending upon where they operate. To simulate the regulatory changes, we turn to data on active direct endorsement lenders.

Using active Direct Endorsement lenders as a base, 18 are included through this provision. The change in the performance analysis requirement (maintaining an acceptable default and claim rate) appears to reduce the number of direct endorsement lenders that meet the requirement (113 active direct endorsement lenders). The combined effect of the two changes in eligibility is to exclude direct endorsement lenders currently participating in lender insurance (a reduction of 54).

In the short run, this effect can be thought of as a transfer between lenders of different regions. In the long run, HUD expects the impact of this rule to be geographically neutral. Lenders will not be permanently reduced as a result of this rule; rather, HUD expects that lenders that can meet the eligibility criteria will eventually assume the business of those that could not meet the new eligibility criteria. The benefits of a clearer and fairer methodology are expected to endure.

3. *Lender Insurance Approval in the Case of Corporate Restructuring.* The proposed rule would facilitate the compliance of new lending institutions resulting from a merger, acquisition, or reorganization with the statutory requirements for Lender Insurance approval. The proposed rule would thus make changes designed to provide additional regulatory flexibility and better reflect existing market conditions. The regulatory 2-year performance history requirement may impose a burden on lenders whose compliance with FHA requirements was not affected by the business reorganization. Although HUD has in the past granted regulatory waivers to address this problem, the proposed rule will codify a solution that is less administratively burdensome than the regulatory waiver process.

The full economic analysis is available for review at *www.regulations.gov.* The docket file for this rule is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As more fully discussed in the ''Regulatory Flexibility Act'' section of the preamble to the October 8, 2010, proposed rule, the amendments made by this final rule do not add any new regulatory burdens on FHA-approved mortgagees. Rather, the final rule codifies much of existing practice regarding indemnification. HUD is also revising the methodology for determining acceptable claim and default rates, and making several other changes designed to provide additional flexibility and to better reflect changing market conditions. These changes will have an overall beneficial economic impact on small business mortgagees. To the extent that the changes have any negative impact, it will be as a consequence of the mortgagee's inability to maintain acceptable risk management practices, and not as a result of a HUD regulatory mandate. Interested readers are referred to the analysis provided in the ''Regulatory Flexibility Act'' section

of the preamble to the proposed rule, commencing at 75 FR 62340.

For the above reasons, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact remains applicable to this final rule and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements for this final rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2502–0059. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance program is 14.117.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, for the reasons discussed in the preamble, HUD amends 24 CFR part 203 to read as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. Revise the authority citation for part 203 to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715z–16, 1715u, and 1717z–21; 42 U.S.C. 3535(d).

■ 2. In § 203.4, revise the reference in paragraph (a) to ''§ 203.5'' to read ''§ 203.3'', revise paragraphs (b), (c), and (d), and add paragraph (e) to read as follows:

§ 203.4 Approval of mortgagees for Lender Insurance.

* * * * *

(b) *Performance: Claim and default rate.* (1) In addition to being unconditionally approved for the Direct Endorsement program, a mortgagee must have had an acceptable claim and default rate (as described in paragraph (b)(3) of this section) for at least 2 years prior to its application for participation in the Lender Insurance program, and must maintain such a claim and default rate in order to retain Lender Insurance approval.

(2) HUD may approve a mortgagee that is otherwise eligible for Lender Insurance approval, but has an acceptable claim and default record of less than 2 years, if:

(i) The mortgagee is an entity created by a merger, acquisition, or reorganization completed less than 2 years prior to the date of the mortgagee's application for Lender Insurance approval;

(ii) One or more of the entities participating in the merger, acquisition, or reorganization had Lender Insurance approval at the time of the merger, acquisition, or reorganization;

(iii) All of the lending institutions participating in the merger, acquisition, or reorganization that had Lender Insurance approval at the time of the merger, acquisition, or reorganization had an acceptable claim and default record for the 2 years preceding the mortgagee's application for Lender Insurance approval; and

(iv) The claim and default record of the mortgagee derived by aggregating the claims and defaults of the entities participating in the merger, acquisition, or reorganization, for the 2-year period prior to the mortgagee's application for Lender Insurance approval, constitutes an acceptable rate of claims and defaults, as defined by this section.

(3) A mortgagee has an acceptable claim and default rate if its rate of claims and defaults is at or below 150 percent of the average rate for insured mortgages in the state(s) in which the mortgagee operates.

(c) *Reviews.* HUD will monitor a mortgagee's eligibility to participate in the Lender Insurance program on an ongoing basis.

(d) *Termination of approval.* (1) HUD may immediately terminate the mortgagee's approval to participate in the Lender Insurance program, in accordance with section 256(d) of the National Housing Act (12 U.S.C. 1715z–21(d)), if the mortgagee:

(i) Violates any of the requirements and procedures established by the Secretary for mortgagees approved to participate in HUD's Lender Insurance program, Direct Endorsement program, or the Title II Single Family mortgage insurance program; or

(ii) If HUD determines that other good cause exists.

(2) Such termination will be effective upon receipt of HUD's notice advising of the termination. Within 30 days after receiving HUD's notice of termination, a mortgagee may request an informal conference with the Deputy Assistant Secretary for Single Family Housing or designee. The conference will be conducted within 30 days after HUD receives a timely request for the conference. After the conference, the Deputy Assistant Secretary (or designee) may decide to affirm the termination action or to reinstate the mortgagee's

Lender Insurance program approval. The decision will be communicated to the mortgagee in writing, will be deemed a final agency action, and, pursuant to section 256(d) of the National Housing Act (12 U.S.C. 1715z–21(d)), is not subject to judicial review.

(3) Lender Insurance authority is automatically terminated for a mortgagee whose nationwide Direct Endorsement approval under § 203.3(d)(2) is terminated, without imposing any further requirement on the mortgagee to comply with this paragraph.

(4) Any termination instituted under this section is distinct from withdrawal of mortgagee approval by the Mortgagee Review Board under 24 CFR part 25.

(e) *Reinstatement.* A mortgagee whose Lender Insurance authority is terminated under this section may apply for reinstatement if the Lender Insurance authority for the mortgagee has been terminated for at least 6 months. In addition to addressing the criteria for Lender Insurance approval specified in paragraphs (a) and (b) of this section, the application for reinstatement must be accompanied by a corrective action plan addressing the issues resulting in the termination of the mortgagee's Lender Insurance authority, along with evidence that the mortgagee has implemented the corrective action plan. HUD may grant the mortgagee's application for reinstatement if the mortgagee's application is complete and HUD determines that the underlying causes for the termination have been satisfactorily remedied.

■ 3. In § 203.255, revise paragraph (f)(1), remove paragraph (f)(4), and add paragraph (g) to read as follows:

§ 203.255 Insurance of mortgage.

* * * * *

(f) *Lender Insurance.* (1) *Pre-insurance review.* For applications for insurance involving mortgages originated under the Lender Insurance program under § 203.6, the mortgagee is responsible for performing a pre-insurance review that would otherwise be performed by HUD under § 203.255(c) on the documents that would otherwise be submitted to HUD under § 203.255(b). The mortgagee's staff that performs the pre-insurance review must not be the same staff that originated the mortgage or underwrote the mortgage for insurance.

* * * * *

(g) *Indemnification.* (1) *General.* By insuring the mortgage, a Lender Insurance mortgagee agrees to indemnify HUD, in accordance with this paragraph.

(2) *Definition of origination.* For purposes of indemnification under this paragraph, the term ''origination'' means the process of creating a mortgage, starting with the taking of the initial application, continuing with the processing and underwriting, and ending with the mortgagee endorsing the mortgage note for FHA insurance.

(3) *Serious and material violation.* The mortgagee shall indemnify HUD for an FHA insurance claim paid within 5 years of mortgage insurance endorsement, if the mortgagee knew or should have known of a serious and material violation of FHA origination requirements, such that the mortgage loan should not have been approved and endorsed by the mortgagee and irrespective of whether the violation caused the mortgage default. Such a serious and material violation of FHA requirements in the origination of the mortgage may occur if the mortgagee failed to, among other actions:

(i) Verify the creditworthiness, income, and/or employment of the mortgagor in accordance with FHA requirements;

(ii) Verify the assets brought by the mortgagor for payment of the required down payment and/or closing costs in accordance with FHA requirements; or

(iii) Address property deficiencies identified in the appraisal affecting the health and safety of the occupants or the structural integrity of the property in accordance with FHA requirements, or

(iv) Ensure that the appraisal of the property serving as security for the mortgage loan satisfies FHA appraisal requirements, in accordance with § 203.5(e).

(4) *Fraud or misrepresentation.* The mortgagee shall indemnify HUD for an insurance claim if the mortgagee knew or should have known that fraud or misrepresentation was involved in connection with the origination of the mortgage, regardless of whether the fraud or misrepresentation caused the mortgage default and regardless of when an insurance claim is filed.

(5) *Demand for indemnification.* The demand for indemnification will be made by either the Secretary or the Mortgagee Review Board. Under indemnification, the Lender Insurance mortgagee agrees to either abstain from filing an insurance claim, or reimburse FHA if a subsequent holder of the mortgage files an insurance claim and FHA suffers a financial loss.

Dated: January 18, 2012.

Carole J. Galante,

Acting Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2012–1508 Filed 1–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9568]

RIN 1545–BI47

Section 482; Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to final regulations (TD 9568), which were published in the **Federal Register** on Thursday, December 22, 2011 (76 FR 80082), Relating to section 482 and methods to determine taxable income in connection with a cost sharing arrangement.

DATES: *Effective* January 25, 2012, and applicable beginning December 22, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph L. Tobin at (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 482 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9568), contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations, (TD 9568), which were the subject of FR Doc. 2011–32458, is corrected as follows:

1. On page 80082, column one, in the preamble, under the caption **DATES**, lines 4 and 5, the language ''1.482–8(c), 1.482–9(n), and 1.301–7701–1(f)'' is corrected to read as ''1.482–8(c), 1.482–9(n), and 301.7701–1(f).''

2. On page 80082, column one, in the preamble, under the caption, Paperwork Reduction Act, line one, the language ''The collection of information'' is corrected to read ''The collections of information''.

3. On page 80086, column three, in the preamble, paragraph d. introductory text, the language ''Contractual CWI Provisions—§ 1.482–1(d)(3)(ii)(C), Examples 3 through 7'' is corrected to read ''Contractual CWI Provisions—§ 1.482–7(h)(2)(iii)(C), Examples 3 through 7.''.

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publication and Regulations Branch, Procedure and Administration.

[FR Doc. 2012–894 Filed 1–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9568]

RIN 1545–BI47

Section 482; Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS).

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9568), which were published in the **Federal Register** on Thursday, December 22, 2011 (76 FR 80082), Relating to section 482 and methods to determine taxable income in connection with a cost sharing arrangement.

DATES: Effective January 25, 2012, and applicable beginning December 22, 2011.

FOR FURTHER INFORMATION CONTACT: Joseph L. Tobin at (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 482 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9568), contains errors which may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Accordingly, 26 CFR Parts 1 and 301 are corrected by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

PART 1—[CORRECTED]

■ **Par. 2.** Section 1.482–1 is amended by revising the first and second sentences of paragraph (b)(2)(i) to read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

* * * * *

(b) * * *

(2) * * *

(i) *Methods.* Sections 1.482–2 through 1.482–7 and 1.482–9 provide specific methods to be used to evaluate whether transactions between or among members of the controlled group satisfy the arm's length standard, and if they do not, to determine the arm's length result. This section provides general principles applicable in determining arm's length results of such controlled transactions, but do not provide methods, for which reference must be made to those other sections in accordance with paragraphs (b)(2)(ii) and (iii) of this section. * * *

* * * * *

Par. 3. Section 1.482–7 is amended by:

■ 1. Revising the fourth sentence of paragraph (c)(3).

■ 2. Revising the fifth sentence of paragraph (g)(2)(v)(C), *Example,* paragraph (i).

■ 3. Revising the first sentence of paragraph (g)(2)(v)(C), *Example,* paragraph (ii).

■ 4. Revising paragraph (k)(2)(ii)(*3*).

The revisions read as follows:

§ 1.482–7 Methods to determine taxable income in connection with a cost sharing arrangement.

* * * * *

(c) * * *

(3) * * * If the conduct is consistent with different, economically equivalent types of transactions then the controlled participants may designate the PCT as being any of such types of transactions. * * *

* * * * *

(g) * * *

(2) * * *

(v) * * *

(C) * * *

Example. (i) * * * Specifically, the Commissioner compares P's anticipated post-tax discounted present value of the financial projections under the CSA (taking into account S's PCT payment of 5% of its sale of product Y) with P's anticipated post-tax discounted present value of the financial projections under a reasonably available licensing alternative that consists of developing intangible X on its own and then licensing X to S or to an uncontrolled party similar to S.

* * * * *

(ii) The Commissioner determines that, as between the two scenarios, all of the components of P's anticipated financial flows are identical, except for the CST and PCT Payments under the CSA, compared to the licensing payments under the licensing alternative. * * *

* * * * *

(3) * * *

(viii) * * *

Example 3. * * * FS determines that the discount rate that would be applied to determine the present value of income and costs attributable to its participation in the licensing alternative would be 12.5% as compared to the 15% discount rate that would be applicable in determining the present value of the net income attributable to its participation in the CSA (reflecting the increased risk borne by FS in bearing a share of the R & D costs in the cost sharing alternative). * * *

* * * * *

(k) * * *

(2) * * *

(ii) * * *

(3) Any further development of intangibles already developed under the CSA or of specified applications of such intangible which has been removed from the IDA (see paragraphs (d)(1)(ii) and (j)(1)(i) of this section for the definitions of reasonably anticipated cost shared intangible and cost shared intangible) and the steps (including any accounting classifications and allocations) taken to implement such removal;

* * * * *

Guy R. Traynor,

Federal Register Liaison, Legal Processing Division, Publication & Regulation Branch (Procedure and Administration).

[FR Doc. 2012–895 Filed 1–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

30 CFR Part 1206

Product Valuation

CFR Correction

■ In Title 30 of the Code of Federal Regulations, Part 700 to End, revised as of July 1, 2011, ''ONNR'' is corrected to read ''ONRR'', as set forth in the following table:

§§ 1206.52, 1206.53, 1206.54, 1206.56, 1206.57 [Corrected]

Section	Page	Paragraph
§ 1206.52	739	(c) introductory text, (c)(2) introductory text, (c)(2)(i), (c)(2)(ii),
	740	(e)(3) two times, (e)(4) introductory text, (e)(5) two times.
§ 1206.53	741	(c) introductory text, (d).
§ 1206.54	741	(a)
§ 1206.56	742	(a), (b)(2) two times, (d).
§ 1206.57	742	(a)(1)(i) two times, (a)(1)(ii) two times, (a)(1)(iii) once.
	743	(a)(1)(iii) three times, (a)(2)(i), (a)(2)(ii) two times, (a)(3) five times, (a)(5) two times, (b)(1) four times,
	744	(b)(2)(iv) introductory text, (b)(2)(iv)(A), (b)(2)(iv)(B), (b)(3)(i), (b)(3)(ii) two times,
	745	(b)(4) five times, (b)(5) introductory text four times, (b)(5)(i), (c)(1)(iii), (c)(1)(iv) two times, (c)(1)(v),
	746	(c)(2)(iii) two times, (c)(2)(v), (c)(2)(vi) two times, (c)(2)(vii), (c)(4).

[FR Doc. 2012–1572 Filed 1–24–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0026]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Thirteenth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Burlington Northern Santa Fe Railway Bridge, also known as the St Johns RR Bridge, across the Willamette River, mile 6.9, at Portland, OR. The deviation is necessary to facilitate track maintenance involving welding on the movable section of the bridge. This deviation allows the bridge to remain in the closed position during maintenance activities.

DATES: This deviation is effective from 9 a.m. on January 30, 2012 through 3 p.m. February 1, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0026 and are available online by going to *http://www.regulations.gov*, inserting USCG–2012–0026 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone (206) 220–7282 email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: Burlington Northern Santa Fe (BNSF) Railway has requested to not open the BNSF Railroad Lift Bridge for vessels to facilitate track maintenance. The bridge, also known as the St Johns RR Bridge, crosses the Willamette River at mile 6.9 and provides 54 feet of vertical clearance above Columbia River Datum 0.0, while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridge during this closure period. Under normal operations this bridge opens on signal as required by 33 CFR 117.5. The deviation period is from 9 a.m. on January 30, 2012 through 3 p.m. February 1, 2012. This deviation allows the lift span of the BNSF Railway Bridge across the Willamette River, mile 6.9, to remain in the closed position and need not open for maritime traffic from 9 a.m. through 3 p.m. daily from January 30, 2012 through February 1, 2012. The bridge shall operate in accordance to 33 CFR 117.5 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners have been notified and will be kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. Due to the nature of work being performed the draw span will be unable to open for maritime traffic during this maintenance period.

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

Dated: January 11, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–1439 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2011–1177]

Drawbridge Operation Regulation; Upper Mississippi River, Rock Island, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the Quad Cities Heart Walk to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for two hours.

DATES: This deviation is effective from 9 a.m. to 11 a.m. on May 19, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1177 and are available online by going to *http://www.regulations.gov*, inserting USCG–2011–1177 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or

copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone (314) 269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a two-hour period from 9 a.m. to 11 a.m., May 19, 2012, while a walk is held between the cities of Davenport, IA and Rock Island, IL. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: January 4, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–1441 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0008]

Drawbridge Operation Regulation; Boudreaux Canal, Chauvin, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the State Route 56 swing bridge across Boudreaux Canal, mile 0.1, near Chauvin, Terrebonne Parish, Louisiana. The deviation is necessary to perform structural repairs on the bridge. This deviation allows the bridge to remain closed-to-navigation for 30 days during March and April 2012.

DATES: This deviation is effective from 6 a.m. on Monday, March 5, 2012 through 7 p.m. on Wednesday, April 4, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0008 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0008 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Kay Wade, Bridge Branch Office, Coast Guard; telephone (504) 671–2128, email *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule for the swing span bridge across Boudreaux Canal, mile 0.1, at Chauvin, Terrebonne Parish, Louisiana. The swing span bridge has a vertical clearance of 5 feet above high water, elevation 3 feet Mean Sea Level in the closed-to-navigation position and unlimited in the open-to-navigation position.

In accordance with 33 CFR 117.5, the bridge currently opens on signal for the passage of vessels. This deviation allows the swing span of the bridge to remain closed-to-navigation Monday through Saturday during the times and dates as follows: From 6 a.m. through 6 p.m. from Monday, March 5, 2012 through Saturday, March 10, 2012; and from 7 a.m. through 7 p.m. from Monday, March 12, 2012 through Wednesday, April 4, 2012. During the deviation period, the swing span of the bridge will open for the passage of vessels from 12 noon to 1 p.m. each work day.

The closures are necessary in order to remove broken and deteriorated bottom lateral cross braces and install I-beam stringers on the bridge deck, as well as to remove and replace splice plate bolts which fasten the two sections of main span girders along the two longitudinal sides of the bridge deck. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. The bridge will be able to open for emergencies, if necessary. There are no alternate waterway routes available. Based on experience and coordination with waterway users, it has been determined that these closures will not have a significant effect on vessels that use the waterway.

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

Dated: January 10, 2012.

David M. Frank,

Bridge Administrator.

[FR Doc. 2012–1442 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–1128]

RIN 1625–AA00

Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, Larose, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the specified waters of the Gulf Intracoastal Waterway, Larose, Lafourche Parish, Louisiana. This temporary safety Zone is needed to protect the general public, vessels and tows from destruction, loss or injury due to the installation of a new sheetpile floodwall on the waterward side of the existing Larose floodwall and construction of a new rip-rap barge impact barrier on the Gulf Intracoastal Waterway side of the new floodwall.

DATES: This rule is effective January 25, 2012 through 11:59 p.m. June 30, 2012. This rule is enforceable with actual notice beginning 12:01 a.m. December 12, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–1128 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–1128 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign (ENS) Nicholas Jones, Coast Guard; telephone (985) 857–8507 ext. 232, email *Nicholas.B.Jones@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. The Coast Guard received notice of the timeline for this project on December 2, 2011. This floodwall construction and repair project is necessary for flood protections; therefore, the Coast Guard determined that immediate action is needed to protect the personnel, general public, vessel and tows, and mariners from hazards associated with the floodwall repair and construction process. Publishing a NPRM would unnecessarily delay the effective date for this rule which would be contrary to the public interest. Delaying this project for the NPRM process would also interfere with the contractually imposed timeline for repair of the floodwall.

Under 5 U.S.C. 553(d)(3), good cause exists for not providing 30 days notice for this rulemaking. The Coast Guard received notice of the timeline for this project on December 2, 2011. Based on the necessity of this floodwall repair and construction project and the repair and construction timeline presented to the Coast Guard, immediate action is required. Delaying the effective date would be contrary to public interest. Delaying or rescheduling the construction and repair to provide 30 days notice also is impracticable because of the dates the construction barges may be deployed to the project site. By making the rule effective immediately upon publication and enforceable with actual notice on December 12, 2011, the construction and repair of the floodwall can continue under the applicable contract.

Basis and Purpose

The US Army Corps of Engineers contracted installation of a new sheetpile floodwall on the waterward side of the existing Larose Floodwall and construction of a new rip-rap barge impact barrier on the waterward side of the new floodwall that will extend approximately 20–45 feet from the existing wall into the Gulf Intracoastal Waterway, Mile Markers 35.2–35.5, west of Harvey Locks.

Discussion of Rule

The Coast Guard is establishing a temporary Safety Zone in the Gulf Intracoastal Waterway, Mile Marker 35.2–35.5, bank to bank, West of Harvey locks, Larose, Lafourche Parish, Louisiana. The temporary safety zone will continue through June 30, 2012. Vessels and tows shall transit at slowest safe speed to minimize wake and, after leaving the slowest safe speed zone, proceed with caution to minimize interference with construction activities. All work on the project is scheduled to be complete by June 30, 2012.

Beginning December 12, 2011 thru June 30, 2012 two barges will be staged on the south side of the waterway at all times but will remain clear of the main channel limit. Notices to Mariners, regarding channel restrictions and closures, will be updated as the project progresses and as the information becomes available. Mariners can contact the contractor via VHF–FM channel 69. Mariners shall transit at their slowest safe speed to minimize wake and proceed with caution while passing through the construction area.

Regulatory Analyses

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

Regulatory Planning and Review

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

This rule creates a safety zone implementing slowest safe speed to minimize wake. Vessels will be allowed to enter and transit through the area. Advance notifications to the marine community regarding this safety zone and any restrictions or closures related to the floodwall repair and construction project will be made through Broadcast Notice to Mariners and Local Notice to Mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit

organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the Safety Zone through June 30, 2012. This Safety Zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time.

If you are a small business entity and are significantly affected by this regulation, please contact ENS Nicholas Jones, Marine Safety Unit Houma, at (985) 857–8507 ext. 232.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule will be in effect until June 30, 2012, but is not expected to result in any significant adverse environmental impact as described in NEPA.

An environmental analysis checklist and a categorical exclusion determination will be provided and made available at the docket as indicated in the **ADDRESSES** section.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195;

33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–1128 is added to read as follows:

§ 165.T08–1128 Safety Zone; Gulf Intracoastal Waterway, Mile Marker 35.2 to Mile Marker 35.5, Larose, Lafourche Parish, LA.

(a) *Location.* Gulf Intracoastal Waterway, Mile Marker 35.2–35.5, West of Harvey Locks, bank to bank, Lafourche Parish, Larose, Louisiana.

(b) *Effective date.* This rule is effective from 12:01 a.m. December 12, 2011 through 11:59 p.m. June 30, 2012.

(c) *Periods of Enforcement.* This rule will be enforced from 12:01 a.m. December 12, 2011 through 11:59 p.m. June 30, 2012. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone should be at slowest safe speed to minimize wake through the duration of this rule. During waterway closures entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City.

(2) Mariners shall transit from Mile Marker 35.2 to Mile Marker 35.5 and pass at slowest safe speed to minimize wake.

(3) Mariners should contact the attendant tug, the M/V YAYA on VHF–FM Channel 69 prior to arrival at the construction site for information regarding available horizontal clearance and passing instructions.

(4) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(5) Advance notification of any anticipated waterway closures will be made through Broadcast Notice to Mariners and Local Notice to Mariners. During a closure, vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative and passage will be considered on a case-by-case basis. They may be contacted on VHF Channel 11, 13, or 16, or by telephone at (985) 380–5370.

Dated: December 8, 2011.

J.C. Burton,

Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.

[FR Doc. 2012–1536 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0455–201131(a); FRL–9621–8]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Section 110(a)(1) Maintenance Plan for the Greensboro-Winston-Salem-High Point 1-Hour Ozone Maintenance Area to Maintain the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the North Carolina State Implementation Plan (SIP), submitted to EPA on April 13, 2011, with supplemental information submitted on May 18, 2011, by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), through the Department of Air Quality. The revisions propose to modify North Carolina's SIP to address the required maintenance plan for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Greensboro-Winston-Salem-High Point, North Carolina 1-hour ozone maintenance area, hereafter referred to as ''the Triad Area.'' The Triad Area is comprised of Davidson, Forsyth, and Guilford and a portion of Davie County. This maintenance plan was submitted to ensure the continued attainment of the 1997 8-hour ozone NAAQS through the year 2018 in the Triad Area. EPA is approving these SIP revisions pursuant to section 110 of the Clean Air Act (CAA or Act). The submitted maintenance plan meets all of the statutory and regulatory requirements, and is consistent with EPA's guidance.

DATES: This rule is effective on *March 26, 2012* without further notice, unless EPA receives relevant adverse comment by February 24, 2012. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0455 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2011–0455, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2011–0455. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo or Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Zuri Farngalo may be reached by phone at (404) 562–9152 or by electronic mail address *farngalo.zuri@epa.gov.* Jane Spann may be reached by phone at (404) 562–9029 or by electronic mail address *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. EPA's Analysis of North Carolina's Submittals
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

In accordance with the CAA, the Triad Area was designated nonattainment for the 1-hour ozone NAAQS on November 6, 1991. *See* 56 FR 56694. The designation for the Triad Area was effective on January 6, 1992. *See* 60 FR 7124.

On November 13, 1992, the State of North Carolina, through NCDENR, submitted a request to redesignate the Triad Area to attainment for the 1-hour ozone NAAQS. Included with the 1-hour ozone redesignation request, North Carolina submitted the required 1-hour ozone monitoring data and maintenance plan ensuring the Area would remain in attainment for the 1-hour ozone NAAQS for at least a period of 10 years (consistent with CAA 175A(a)). The maintenance plan submitted by North Carolina followed EPA guidance for maintenance areas, subject to section 175A of the CAA.

On September 9, 1993, EPA approved North Carolina's request to redesignate the Triad Area (58 FR 4731) to attainment for the 1-hour ozone NAAQS. The maintenance plan for the Triad Area became effective on November 8, 1993. North Carolina provided an update to the Triad Area maintenance plan on April 4, 2004, in accordance with section 175(A)(b), to extend the maintenance plan to cover additional years such that the entire maintenance period was for at least 20 years after the initial redesignation of this Area to attainment. EPA approved North Carolina's update to the Triad Area's maintenance plan on September 20, 2004. *See* 69 FR 56163.

On April 30, 2004, EPA designated and classified areas for the 1997 8-hour ozone NAAQS (69 FR 23858), and published the final Phase 1 Rule for implementation of the 1997 8-hour ozone NAAQS (69 FR 23951) (Phase 1 Rule). In the April 30, 2004, rulemaking entitled ''Air Quality Designations and Classifications for the 8–Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas with Deferred Effective Dates'' (69 FR 23858), EPA designated every county in the United States unclassifiable/attainment or nonattainment for the new 8-hour ozone NAAQS. Counties in and around the Triad Area (also known as the Greensboro-Winston Salem-High Point Area) were designated as nonattainment with a deferred effective date as part of the Early Action Compact (EAC) program. (For more information on the EAC [1] Program, see, *http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm.*) The Greensboro-Winston Salem-High Point nonattainment-deferred EAC Area [2] for the 1997 8-hour ozone NAAQS (which includes the entire Triad Area) is comprised of Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, and Rockingham counties. One year after the effective date of EPA's designations for the 1997 8-hour ozone NAAQS (*i.e.,* June 15, 2005), the 1-hour ozone NAAQS was revoked for most areas. However, the 1-hour ozone NAAQS was not revoked for previous 1-hour ozone nonattainment areas that were currently 8-hour nonattainment-deferred EAC areas, such as the Greensboro-Winston Salem-High Point EAC Area.

The Greensboro-Winston Salem-High Point EAC Area attained the 1997 8-hour ozone NAAQS with a design value of 0.083 parts per million (ppm) using three years of quality assured data for the years of 2005–2007. On February 6, 2008, EPA proposed that 13 nonattainment areas with deferred effective dates, including the Greensboro-Winston Salem-High Point Area, be designated attainment for the 1997 8-hour ozone NAAQS. *See* 73 FR 6863. These areas met all of the milestones of the EAC program and demonstrated that they were in attainment of the 1997 8-hour ozone NAAQS as of December 31, 2007. In the same rulemaking, EPA also proposed that one year after the effective date of these designations, the 1-hour ozone NAAQS be revoked in these areas and the transportation conformity requirements for the 1-hour ozone NAAQS no longer remain in effect in these areas after the revocation. This rulemaking was finalized on April 2, 2008. *See* 73 FR 17897. Effective April 15, 2008, the Greensboro-Winston Salem-High Point EAC Area was designated as attainment for the 1997 8-hour ozone NAAQS.

In accordance with section 110(a)(1) of the CAA and the Phase 1 Rule,[3] North Carolina was required to submit a 10-year maintenance plan for the portion of the Greensboro-Winston Salem-High Point EAC Area that comprised the Triad Area (as a former 1-hour ozone maintenance area) within three years of the effective date (*i.e.,* April 15, 2011) of the Area being designated attainment for the 1997 8-hour ozone NAAQS. On May 20, 2005, EPA issued guidance providing information on how a state might fulfill the maintenance plan obligation established by the CAA and the Phase 1 Rule (Memorandum from Lydia N. Wegman to Air Division

[1] An EAC is an agreement between a State, local governments and EPA to implement measures not necessarily required by the Act in order to achieve cleaner air as soon as possible. The program was designed for areas that approached or monitored exceedances of the 1997 8-hour ozone NAAQS, but were in attainment for the 1-hour ozone NAAQS. See, *http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm,* for further information.

[2] A nonattainment-deferred EAC Area is an area that at the time of EPA's designation had a design value that exceeded the 1997 8-hour ozone NAAQS.

[3] On December 22, 2006, the United States Court of Appeals for the District of Columbia Circuit issued an opinion that vacated EPA's Phase 1 Rule for the 1997 8-hour Ozone Standard. *South Coast Air Quality Management District.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). The Court vacated those portions of the Phase 1 Rule that provided for regulation of the 1997 8-hour ozone nonattainment areas designated under Subpart 1 in lieu of Subpart 2 (of part D of the CAA), among other portions. The Court's decision does not alter any requirements under the Phase 1 Rule for section 110(a)(l) maintenance plans.

Directors, *Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(1) of Clean Air Act,* May 20, 2005—hereafter referred to as the ''Wegman Memorandum''). On April 13, 2011, with supplemental information submitted on May 18, 2011, North Carolina provided revisions to EPA to meet the requirements for the 110(a)(1) maintenance plan for the Triad Area.

II. EPA's Analysis of North Carolina's Submittal

As mentioned above, on April 13, 2011, the State of North Carolina, through NCDENR submitted a SIP revision, with supplemental information submitted on May 18, 2011, containing the 1997 8-hour ozone maintenance plan for the Triad Area as required by section 110(a)(1) of the CAA and the provisions of EPA's Phase 1 Rule. *See* 40 CFR 51.905(a)(4). The purpose of the April 13, 2011, submission is to ensure continued attainment and maintenance of the 1997 8-hour ozone NAAQS until 2018 for this attainment area. The May 18, 2011, supplemental information contained Appendix C SESARM reference document, and Appendix D the Public Notice Report, which were both inadvertently left out of the original submittal.

As required, North Carolina's plan provides data showing continued attainment and maintenance of the 1997 8-hour ozone NAAQS in the Triad Area for at least 10 years from the effective date of this Area's designation as attainment for the 1997 8-hour ozone NAAQS. The plan also includes components illustrating how the Area will continue attainment of the 1997 8-hour ozone NAAQS and provides contingency measures. The section 110(a)(1) maintenance plan components for the Triad Area are discussed below.

(a) *Attainment Inventory.* In order to demonstrate maintenance in the aforementioned area, North Carolina developed comprehensive inventories of volatile organic compounds (VOC) and nitrogen oxides (NO_X) emissions from area, point, on-road mobile, non-road mobile (including aircraft, locomotive and marine (ALM)),[4] and manmade emission sources using 2007 as the base year. According to the May 20, 2005, *Maintenance Plan Guidance Document for Certain 8-Hour Ozone Areas Under Section 110(a)(1) of the Clean Air Act,* a state may use one of the three years for which the 1997 8-hour attainment designation was based (2001, 2002 and 2003) as their attainment inventory base year. However, due to the fact that the Triad Area was an EAC area, the effective date of designation was deferred to April 15, 2008, and therefore consideration of a later base year of 2005, 2006, or 2007 was required for the purpose of an emissions inventory. *See* 69 FR 23857. For the purpose of this maintenance plan, North Carolina chose 2007 as the attainment level emissions base year for the Triad Area. The State's submittal contains the detailed inventory data and summaries by source category for the Triad Area.

In accordance with USEPA's Air Emissions Reporting Rule requirements, North Carolina compiles a statewide emissions inventory for point sources on an annual basis. Area source emissions are estimated by multiplying an emission factor by a known indicator like number of employess or population. On-road mobile emissions of VOC and NO_X were estimated using the MOVES2010a mobile model. Non-road mobile emissions data were derived using the U.S. EPA's NONROAD 2008 model with the exception of railroad locomotives and aircraft engines that are estimated by using an emission factor.

In projecting data for the maintenance year 2018 emissions inventories, North Carolina used several methods to project data from the base year 2007 to the interim years 2011, and 2018. These projected inventories were developed using EPA-approved technologies and methodologies including the Southeastern Emissions Modeling, Analysis, and Planning methodology. Projected point, area, and non-road mobile source inventories were developed using the 2007 base year inventories and economic growth factors from EPA's Economic Growth and Analysis System.

The following tables provide VOC and NO_X emissions data for the 2007 base attainment year inventories, as well as projected VOC and NO_X emissions inventory data for 2010, 2014, and 2018. The Phase 1 Rule provides that the 10-year maintenance period begin as of the effective date of designation for the 1997 8-hour NAAQS for the Area. The designations for the 13 EAC attainment areas (of which the Greensboro-Winston Salem- High Point Area (inclusive of the Triad Area) was one) were effective in April 2008 so the maintenance period must end no earlier than 2018.

TABLE 1—2007 VOC AND NO_X BASE YEAR EMISSIONS INVENTORY FOR THE TRIAD AREA

[Tons/day]

County	Point	Area	Onroad	Nonroad	Manmade	Total
	—VOC emissions—					
Davidson	3.83	6.83	6.60	1.97	19.23	38.46
Davie	0.19	4.68	1.85	1.32	8.04	16.08
Forsyth	4.03	16.53	12.05	3.79	36.4	54.54
Guilford	9.68	22.62	17.41	8.33	58.04	116.08
Total *	17.73	50.66	37.91	15.41	121.71	225.16
	—NO_X emissions—					
Davidson	2.73	0.62	15.08	3.56	21.99	43.98
Davie	0.06	0.21	5.03	0.78	6.08	12.16
Forsyth	2.22	0.99	27.73	4.94	35.88	56.14
Guilford	1.06	2.01	42.78	11.83	57.68	115.36
Total *	6.07	3.83	90.62	21.11	121.63	227.64

* Due to conventional rounding rules, emission totals listed in Tables 1 and 2 may not reflect the absolute mathematical totals.

[4] No commercial marine vessels operate in Davidson, Davie, Forsyth or Guilford counties so there are no emissions reported for this category.

TABLE 2—PROJECTED VOC AND NO_X EMISSIONS INVENTORY FOR THE TRIAD AREA

[Tons/day]

Source type	2007	2011	2018
	—NO_X emissions—		
Point	6.07	6.19	6.47
Area	3.83	3.87	3.88
Onroad	90.62	64.56	36.00
Nonroad	21.11	16.96	10.78
Manmade	121.63	91.58	57.13
Total *	243.26	183.16	114.26
	VOC emissions—		
Point	17.73	17.75	17.80
Area	50.66	54.96	64.53
Onroad	37.91	26.16	15.37
Nonroad	15.41	12.11	8.81
Manmade	121.71	110.98	106.51
Total *	243.42	221.96	213.02

* Due to conventional rounding rules, emission totals listed in Tables 1 and 2 may not reflect the absolute mathematical totals.

As shown in Table 2 above, the Triad Area is projected to steadily decrease its total VOC and NO_X emissions from the base year of 2007 to the maintenance year of 2018. This VOC and NO_X emission decrease demonstrates continued attainment/maintenance of the 1997 8-hour ozone NAAQS for ten years from 2008 (the year the Area was effectively designated attainment for the 1997 8-hour ozone NAAQS) as required by the CAA and Phase 1 Rule. NOx and VOC emissions are expected to decrease approximately 47 and 9 percent, respectively, from the attainment base year to 2018. These projected reductions of ozone precursors signal continued maintenance of the 1997 8-hour ozone NAAQS.

The attainment inventories submitted by North Carolina for this Area are consistent with the criteria as discussed in the Wegman Memorandum (For more information on the Wegman Memorandom see *http://www.epa.gov/ttn/oarpg/t1/memoranda/policymem33d.pdf.*) EPA finds that the future emission levels for the projected years 2011, and 2018, are expected to be less than the attainment level emissions in 2007. In the event that future 1997 8-hour ozone monitoring values in the Triad Area are found to violate the 1997 8-hour ozone NAAQS, the contingency plan section of the Triad Area's maintenance plan includes measures that will be promptly implemented to ensure that the Triad Area returns to attainment of the 1997 ozone NAAQS. Please see Section (d) *Contingency Plan,* below, for additional information related to the contingency measures in the maintenance plan.

(b) *Maintenance Demonstration.* The primary purpose of a maintenance plan is to demonstrate how an area will continue to remain in attainment with the 1997 8-hour ozone standards for the 10-year period following the effective date of designation as unclassifiable/attainment. The required end projection year for the Triad Area is 2018. As discussed in Section (a) Attainment Inventory above, North Carolina identified the level of ozone-forming emissions that were consistent with attainment of the NAAQS for ozone in 2007. North Carolina projected VOC and NO_X emissions for 2011 and 2018. EPA finds that the future emissions levels in these years are expected to be below the emissions levels in 2007 in the Triad Area.

North Carolina's SIP revisions for the maintenance plan for the Triad Area also relies on a combination of several air quality measures that will provide for additional 1997 8-hour ozone emissions reductions in this Area. The Triad Area is also benefiting from the following reductions that are occurring in other states in the Southeast: (1) North Carolina Clean Smokestacks Act, (2) Atlanta/Northern Kentucky/Birmingham 1-hour SIPs, (3) NO_X reasonably available control technology in 1997 8-hour ozone nonattainment area SIP, and (4) implementation of NO_X SIP Call Phase 1 in southeastern states. Moreover, despite the legal status of the Clean Air Interstate Rule (CAIR) as remanded, many facilities have already installed or are continuing with plans to install emission controls that may benefit the Triad Area.

(c) *Consideration of CAIR.* The NO_X SIP Call requires states to make significant, specific emissions reductions. It also provided a mechanism, the NO_X Budget Trading Program, which states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but created another mechanism—the CAIR NO_X ozone season trading program—which states could use to meet their SIP Call obligations (70 FR 25289–90). EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR NO_X ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program.

In 2008, the US Court of Appeals for the D.C. Circuit remanded CAIR to the Agency, leaving existing CAIR programs in place while directing EPA to replace them as rapidly as possible with a new rule consistent with the CAA. Therefore, the provisions of CAIR, including the NO_X ozone season trading program, remain in place during the remand (*North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008)), and continue to satisfy the trading requirements of the NO_X SIP Call, as EPA is no longer administering the NO_X Budget Trading Program. Nonetheless, all states, regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call, even when the existing CAIR NO_X ozone season trading program is replaced by the Cross State

Air Pollution Rule (CSAPR) in 2012. That rule, promulgated on July 6, 2011, replaces and strengthens the 2005 CAIR trading programs, and meets the CAA requirements and responds to the court's concerns. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour standards.

All NO_X SIP Call states, including North Carolina, have SIPs that currently satisfy their obligations under the SIP Call, and the SIP Call reduction requirements are being met. EPA will continue to enforce the requirements of the NO_X SIP Call even after the CSAPR takes effect. For these reasons, EPA believes that regardless of the status of the CAIR and CSAPR programs, the NO_X SIP call requirements can be relied upon in demonstrating maintenance.

(d) *Ambient Air Quality Monitoring.* The table below shows design values [5] for the Triad Area. The ambient ozone monitoring data were collected at sites that were selected with assistance from EPA and are considered representative of the areas of highest concentration. The State of North Carolina will continue to conduct ambient air quality monitoring programs for ozone in the Triad Area. All monitoring programs will continue in accordance with applicable EPA monitoring requirements contained in 40 CFR Part 58. Any modification to the ambient air monitoring network will be accomplished through close consultation with EPA. The Triad Area has not had a monitored design value that exceeded the 1997 8-hour NAAQS since the 2002–2004 design value time-period as seen in Table 3.[6]

TABLE 3—MAXIMUM 8-HOUR OZONE DESIGN VALUES FOR THE TRIAD AREA

[ppm]

Years	Design value
2001–2003	0.093
2002–2004	0.087
2003–2005	0.082
2004–2006	0.081
2005–2007	0.083
2006–2008	0.082
2007–2009	0.079
2008–2010	0.076

The maximum design value for 2008 through 2010 identified in Table 3 demonstrates attainment of the 1997 8-hour ozone NAAQS at a level of 0.076 ppm. Further, these design values indicate that the Triad Area is expected to continue attainment of the 1997 8-hour ozone NAAQS based on a gradual decrease in the design values. The attainment level for the 1997 8-hour ozone standards is 0.08 ppm, effectively 0.084 ppm with the rounding convention. In the event that a design value for the Triad Area monitors exceed the 1997 8-hour ozone standards, one or more contingency measures included in North Carolina's maintenance plan would be promptly implemented in accordance with the contingency plan, as discussed below.

(e) *Contingency Plan.* In accordance with 40 CFR 51.905(a)(4)(ii) and the Wegman Memorandum, the section 110(a)(1) maintenance plan includes contingency provisions to promptly correct a violation of the 1997 8-hour ozone NAAQS that may occur. The State of North Carolina has established three triggers to activate contingency measures including: (1) A violation of the 1997 ozone NAAQS at any of the Triad area monitors, (2) monitored ozone levels indicating that an actual ozone NAAQS violation is imminent, and (3) a monitored fourth high exceedance of 1997 8-hour ozone NAAQS at any monitor. In the maintenance plan, if contingency measures are triggered, North Carolina has committed to implement the measures as expeditiously as practicable, including adopting one or more contingency measures as expeditiously as practical and implementing the measures within 24 months of the triggering event. The State's contingency measures include: (1) NO_X Reasonably Available Control Technology on stationary sources in the Triad maintenance area; (2) diesel inspection and maintenance program; (3) implementation of diesel retrofit programs, including incentives for performing retrofits; and, (4) additional controls in upwind areas.

These contingency measures and schedules for implementation satisfy EPA's long-standing guidance on the requirements of section 110(a)(1) of continued attainment. Continued attainment of the 1997 8-hour ozone NAAQS in the Triad Area will depend, in part, on the air quality measures discussed previously (see section II). In addition, North Carolina commits to verify the 1997 8-hour ozone status in this maintenance plan through periodic ozone precursor emission inventory updates. Emission inventory updates will be completed by 18 months following the end of the inventory year to verify continued attainment of the 1997 8-hour ozone NAAQS.

III. Final Action

Pursuant to section 110(a)(1) of the CAA, EPA is approving the maintenance plan addressing the 1997 8-hour ozone NAAQS in the Triad Area, submitted by the State of North Carolina, through NCDENR, on April 13, 2011, with supplemental information submitted on May 18, 2011. The maintenance plan ensures continued attainment of the 1997 8-hour ozone NAAQS through the maintenance year 2018. EPA has evaluated North Carolina's submittal and has determined that it meets the applicable requirements of the CAA and EPA regulations, and is consistent with EPA policy. On March 12, 2008, EPA issued revised ozone NAAQS. The current action, however, is being taken to address requirements under the 1997 8-hour ozone NAAQS.

EPA is publishing this rule without prior proposal because the Agency views this as a non-controversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comment be filed. This rule will be effective on March 26, 2012 without further notice unless the Agency receives adverse comment by February 24, 2012. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. If no such comments are received, the public is advised this rule will be effective on March 26, 2012 and no

[5] The air quality design value at a monitoring site is defined as the concentration that when reduced to the level of the standard ensures that the site meets the standard. For a concentration-based standard, the air quality design value is simply the standard-related test statistic. Thus, for the primary and secondary 1997 8-hour ozone standards, the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration is also the air quality design value for the site. 40 CFR 50, Appendix I, Section 3.

[6] Under EPA regulations found at 40 CFR part 50, the 1997 8-hour ozone NAAQS are attained when the 3-year average of the annual fourth-highest daily maximum 8-hour ambient air quality ozone concentrations is less than 0.08 parts per million (i.e. 0.084 when rounding is considered).

further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 26, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: January 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(e) is amended by adding new entries for ''1997 8-Hour Ozone 110(a)(1) Maintenance Plan for the Triad Area'' and ''Supplement to 110(a)(1) Maintenance Plan for the Triad Area'' to read as follows at the end of the table:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	**Federal Register** citation
* * *	*	*	* *
1997 8-Hour Ozone 110(a)(1) Maintenance Plan for the Triad Area.	4/13/11	3/26/12	[Insert citation of publication.]
Supplement to 110(a)(1) Maintenance Plan for the Triad Area	5/18/2011	3/26/12	[Insert citation of publication.]

[FR Doc. 2012–1360 Filed 1–24–12; 8:45 am]
BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0968; FRL–9334–9]

Etoxazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on field corn and popcorn. Valent U.S.A. Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 25, 2012. Objections and requests for hearings must be received on or before March 26, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0968. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Autumn Metzger, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5314; email address: *metzger.autumn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the harmonized guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0968 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 26, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0968, by one of the following methods:

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

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 25, 2011 (76 FR 10584) (FRL–8863–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7783) by Valent USA Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596. The petition requested that 40 CFR 180.593 be amended by establishing tolerances for residues of the miticide/ovicide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on corn, field, grain at 0.01 parts per million (ppm); corn, field, forage at 0.6 ppm; corn, field, stover at 2.5 ppm; corn, field, refined oil at 0.03 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 2.5 ppm; poultry, fat at 0.01 ppm; and poultry, liver at 0.02 ppm. That notice referenced a summary of the petition prepared by Valent, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has modified the levels at which some of the tolerances are being set and determined tolerances are not needed for poultry.

The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Etoxazole possesses low acute toxicity via all routes of exposure. It is not an eye or dermal irritant or a dermal sensitizer. No toxicity was seen at the limit dose in a 28-day dermal toxicity study in rats.

The liver is the main target organ in mice, rats and dogs. In a 90-day toxicity study in dogs, increased liver weights and centrilobular hepatocellular swelling in the liver were observed. Similar effects were observed in a chronic toxicity study in dogs at similar doses, indicating that systemic effects (mainly liver effects) occur at similar dose levels following short- through long-term exposure without increasing in severity. In a 90-day toxicity study in mice, hepatotoxicity (increased relative liver weight, liver enlargement, and centrilobular hepatocellular swelling) was observed at high doses. Similar effects were observed at the high dose in a mouse carcinogenicity study. Subchronic and chronic toxicity studies in rats produced similar effects (increased liver weights, centrilobular hepatocellular swelling, etc.) to those seen in mice and dogs. In addition, slight increases in thyroid weights and incisors were observed in subchronic and chronic toxicity studies in rats at high doses and at terminal stages of the study. Toxicity was not observed at the highest dose tested (HDT) in another carcinogenicity study in mice. There is no evidence of immunotoxicity or neurotoxicity in any of the submitted studies.

Two studies in mice showed no evidence of carcinogenicity up to the HDT. In a rat carcinogenicity study, which was deemed unacceptable due to inadequate dosing, benign interstitial cell tumors (testis) and pancreas benign islet cell adenomas were observed (in females) at the high dose. These effects were not observed in an acceptable carcinogenicity study in rats at higher doses. In special mechanistic male rat studies there were no observable changes in serum hormone levels (estradiol, luteinizing hormone (LH), prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis) noted. EPA classified etoxazole as ''not likely to be carcinogenic to humans.'' Etoxazole is not mutagenic.

The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. The rabbit developmental toxicity study included maternal toxic effects (liver enlargement, decreased weight gain, and decreased food consumption) at the same dose as developmental effects (increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs). In the 2-generation reproduction study conducted with rats, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose, indicating increased qualitative susceptibility.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document titled ''Etoxazole. Human Health Risk Assessment for Proposed Uses in/on Field Corn and Pop Corn,'' pp. 24–27 in docket ID number EPA–HQ–OPP–2010–0968.

B. Toxicological Points of Departure/Levels of Concern

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

A summary of the toxicological endpoints for etoxazole used for human risk assessment is discussed in Unit III.B., in the Table of the final rule published in the **Federal Register** of April 13, 2011 (76 FR 20537) (FRL–8867–5) (*http://www.gpo.gov/fdsys/pkg/FR-2011-04-13/pdf/2011-8550.pdf.*)

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in 40 CFR 180.593. EPA assessed dietary exposures from etoxazole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern

occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for etoxazole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys for Food Intake by Individuals (CSFII). As to residue levels in food, an unrefined, chronic dietary exposure assessment was performed for the general U.S. population and various population subgroups using tolerance-level residues for all agricultural commodities and 100 percent crop treated (PCT) information.

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

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

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

Based on the First Index Reservoir Screening Tool (FIRST), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of etoxazole for chronic exposures for non-cancer assessments are estimated to be 4.761 parts per billion (ppb) for surface water and 0.746 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Etoxazole is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. In a rat reproduction study, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose; thereby indicating increased qualitative susceptibility. Based on the concerns in this unit, a Degree of Concern Analysis was performed by EPA, which concluded that concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur at the same dose as parental toxicity; and

iii. The doses selected for various risk assessment scenarios are lower (~3000-fold lower) than the doses that caused offspring toxicity in the rat 2-generation reproduction study. Therefore, the endpoints selected for risk assessment are protective of the effects seen in the rat reproduction study.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for etoxazole is complete except for acute and subchronic neurotoxicity and immunotoxicity studies. Changes to 40 CFR 180.158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. Although these studies are not yet available for etoxazole, the available data do not show any evidence of treatment-related effects on the immune system. Further, there is no evidence of neurotoxicity in any study in the toxicity database for etoxazole. Therefore, the EPA does not believe that conducting neurotoxicity and immunotoxicity studies will result in a NOAEL lower than the NOAEL of 4.62 milligrams/kilograms/day (mg/kg/day) already established for etoxazole. Consequently, an additional database uncertainty factor does not need to be applied.

ii. There is no indication that etoxazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility of offspring (pup mortality) compared to less severe parental effects (increased liver and adrenal weights) at the same dose in the rat multi-generation reproduction study, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs (10X for interspecies variation and 10X for intraspecies variation) to be used in the risk assessment. Therefore, there are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to etoxazole in drinking water. These assessments will

not underestimate the exposure and risks posed by etoxazole.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, etoxazole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 11% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole.

3. *Short and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short- and/or intermediate-term adverse effect was identified; however, etoxazole is not registered for any use patterns that would result in short- and/or intermediate-term residential exposure. Short- and/or intermediate-term risk is assessed based on short- and/or intermediate term residential exposure plus chronic dietary exposure. Because there is no short- and/or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and/or intermediate-term risk), no further assessment of short- and/or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and/or intermediate-term risk for etoxazole.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection (GC/NPD) and gas chromatography/mass selective detection (GC/MSD) methods) are available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

The Codex has not established a MRL for etoxazole for the commodities discussed in this document.

C. Revisions to Petitioned-For Tolerances

Based upon analysis of the data supporting the petition using the Organization for Economic Cooperation and Development tolerance calculation procedures, the EPA revised the tolerance levels for corn, field, forage from 0.6 ppm to 0.80 ppm; corn, field, stover from 2.5 ppm, to 4.0 ppm and corn, pop, stover from 2.5 ppm to 4.0 ppm.

There is no reasonable expectation of finding quantifiable residues of etoxazole in poultry commodities based on the calculated maximum reasonable dietary burden (MRDB) for poultry (0.0077 ppm) and the results from the poultry metabolism study. Therefore, tolerances for residues of etoxazole in poultry, fat and poultry, liver were not required for this petition.

V. Conclusion

Therefore, tolerances are established for residues of etoxazole in or on corn, field, grain at 0.01 ppm; corn, field, forage at 0.80 ppm; corn, field, stover at 4.0 ppm; corn, field, refined oil at 0.03 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 4.0 ppm.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments,

on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 13, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.593 is amended in paragraph (a) by alphabetically adding the following commodities to the table to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Corn, field, forage	0.80
Corn, field, grain	0.01
Corn, field, refined oil	0.03
Corn, field, stover	4.0
Corn, pop, grain	0.01
Corn, pop, stover	4.0
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[FR Doc. 2012–1254 Filed 1–24–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–1017; FRL–9332–1]

Rimsulfuron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of rimsulfuron in or on the caneberry subgroup 13–07A and the bushberry subgroup 13–07B. Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective January 25, 2012. Objections and requests for hearings must be received on or before March 26, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–1017. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an

objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–1017 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before March 26, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–1017, by one of the following methods:

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of February 25, 2011 (76 FR 10584) (FRL–8863–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7809) by IR–4, Rutgers, The State University of New Jersey, 500 College Rd. East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.478 be amended by establishing tolerances for residues of the herbicide rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on caneberry, subgroup 13–07A at 0.01parts per million (ppm) and bushberry, subgroup 13–07B at 0.01 ppm. That notice referenced a summary of the petition prepared by DuPont, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Rimsulfuron has low acute toxicity by oral, dermal, and inhalation routes of exposure. It is a moderate eye irritant and is not a dermal sensitizer. In subchronic and chronic toxicity studies in rats, toxic effects included decreased body weight, decreased body weight gain, increased relative liver and absolute kidney weights, and diuresis. In the subchronic study in mice, increased red blood cell (RBC) and hemoglobin, and decreased body weight gain and food efficiency were observed. In the chronic study in mice, decreased body weight, increased incidences of dilation and cysts in the glandular stomach, and degeneration of the testicular artery and tunica albuginea were observed. In the subchronic study in dogs, diuresis was indicated by urinary volume, platelet concentration and kidney weights accompanied by decreased urinary osmolality. In the chronic study in dogs, increased absolute liver and kidney weights, increased seminiferous tubule degeneration, and increased number of spermatid giant cells present in epididymides in males were observed.

In the developmental toxicity study in rats, no toxicity was seen at the highest dose tested (HDT). In the developmental toxicity study in rabbits, and in the 2-generation reproduction toxicity study in rats, developmental/offspring toxicity was seen in the presence of maternal/systemic toxicity and at similar dose levels. There is no quantitative or qualitative evidence of increased susceptibility following pre- and/or postnatal exposures, and there are no concerns or residual uncertainties.

Rimsulfuron was classified by EPA as ''not likely to be carcinogenic to humans'' based on the absence of tumors in carcinogenicity studies conducted in rats and mice.

Specific information on the studies received and the nature of the adverse effects caused by rimsulfuron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Rimsulfuron. Human Health Risk Assessment for Proposed Section 3 Uses on Caneberry and Bushberry,'' pp. 31–33 in docket ID number EPA–HQ–OPP–2010–1017.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each

toxicological study to determine the dose at which the NOAEL and the LOAEL are identified. Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for rimsulfuron used for human risk assessment is shown in the Table of this unit.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR RIMSULFURON FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age and General population including infants and children).	No appropriate endpoint attributable to a single dose identified.		
Chronic dietary (All populations)	NOAEL = 11.8 mg/kg/day ..... UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.118 mg/kg/day cPAD = 0.118 mg/kg/day	Combined Chronic/Carcinogenicity-Rat LOAEL= 121 mg/kg/day in males; 568mg/kg/day in females (NOAEL=163 mg/kg/day), based on decreased body weight gains and liver effects.
Cancer (Oral, dermal, inhalation) ..	Rimsulfuron is considered ''not likely to be carcinogenic to humans'' due to the absence of tumors in rat and mouse carcinogenicity studies.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. Mg/kg/day = milligrams/kilograms/day.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to rimsulfuron, EPA considered exposure under the petitioned-for tolerances as well as all existing rimsulfuron tolerances in 40 CFR 180.478. EPA assessed dietary exposures from rimsulfuron in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for rimsulfuron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food by Individuals (CSFII). As to residue levels in food, EPA assumed that rimsulfuron residues were present at tolerance levels in all commodities for which tolerances have been established, and that 100% of those crops were treated with rimsulfuron.

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

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

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of rimsulfuron for acute exposures are estimated to be 5.596 parts per billion (ppb) for surface water and 0.016 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 0.120 ppb for surface water and 0.016 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For the chronic dietary risk assessment, the water concentration of value 0.120 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Rimsulfuron is not registered for any specific use patterns that would result in residential exposure.

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

EPA has not found rimsulfuron to share a common mechanism of toxicity with any other substances, and rimsulfuron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this

tolerance action, therefore, EPA has assumed that rimsulfuron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* In the developmental toxicity study in rats, no developmental toxicity was seen at the HDT. In the developmental toxicity study in rabbits and in the 2-generation study in rats, developmental and offspring toxicity were seen in the presence of maternal/systemic toxicity. Consequently, there is no evidence of quantitative or qualitative increased susceptibility following *in utero* or postnatal exposures. Therefore, there are no concerns, nor residual uncertainties for pre- and/or postnatal toxicity after exposure to rimsulfuron.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The toxicity database for rimsulfuron is complete with the exception of the acute and subchronic neurotoxicity and the immunotoxicity studies which are required by the new part 158 guidelines. Despite the requirement for these studies, there is no evidence that rimsulfuron either causes neurotoxic effects or directly targets the immune system, and therefore an additional uncertainty factor is not needed to account for the lack of these studies.

ii. A developmental neurotoxicity study is not required because neither the subchronic or chronic toxicity studies in rats and dogs, the developmental toxicity studies in rats and rabbits, nor the 2-generation reproduction study indicated that the nervous system was specifically affected by treatment with rimsulfuron.

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

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to rimsulfuron in drinking water. These assessments will not underestimate the exposure and risks posed by rimsulfuron.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, rimsulfuron is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to rimsulfuron from food and water will utilize < 1% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. There are no residential uses for rimsulfuron.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Short- and intermediate-term adverse effects were identified; however, rimsulfuron is not registered for any use patterns that would result in short- and/or intermediate-term residential exposure. Short- and intermediate-term risk is assessed based on short- and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short- and/or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess short- and intermediate-term risk), no further assessment of short- and intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short- and intermediate-term risk for rimsulfuron.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

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

B. International Residue Limits

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

The Codex has not established a MRL for rimsulfuron.

V. Conclusion

Therefore, tolerances are established for residues of rimsulfuron, *N*-((4,6-dimethoxypyrimidin-2-yl)aminocarbonyl)-3-(ethylsulfonyl)-2-pyridinesulfonamide, including its metabolites and degradates, in or on caneberry, subgroup 13–07A at 0.01 ppm; and bushberry, subgroup 13–07B at 0.01 ppm.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: January 11, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.478 is amended by alphabetically adding the following commodities to the table in paragraph (a) to read as follows:

§ 180.478 Rimsulfuron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Bushberry, subgroup 13–07B ...	0.01
Caneberry, subgroup 13–07A ..	0.01
* * * * *	

* * * * *

[FR Doc. 2012–1258 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified

elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified
City of Baltimore, Maryland Docket No.: FEMA–B–1066				
Maryland	City of Baltimore	Gwynn Falls	Approximately 30 feet downstream of Old Annapolis Road.	+9
			Approximately 2,450 feet upstream of Forest Park Avenue.	+275
Maryland	City of Baltimore	Herring Run	Just downstream of the I–95 bridge	+14
			Approximately 1,300 feet upstream of the I–895 bridge.	+31
Maryland	City of Baltimore	Jones Falls	Approximately 50 feet downstream of East Pratt Street.	+9
			Approximately 200 feet west of the intersection of Falls Road and Maryland Avenue.	+67
Maryland	City of Baltimore	Maidens Choice Run	Approximately 250 feet downstream of Colleen Road northeast of the intersection of South Beechfield Avenue.	+173
			Approximately 270 feet southeast of the intersection of Mallow Hill Road & Mardrew Road.	+333
Maryland	City of Baltimore	Unnamed Tributary to Herring Run.	Approximately 1,420 feet upstream of North Bend Road.	+16
			Approximately 2,000 feet upstream of North Point Road.	+36

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Baltimore

Maps are available for inspection at the Department of Planning, 401 East Fayette Street, 8th Floor, Baltimore, MD 21202.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sierra County, California, and Incorporated Areas Docket No.: FEMA–B–1128			
Downie River	Approximately 0.76 mile downstream of Jersey Flat Bridge.	+2897	Unincorporated Areas of Sierra County.
	Approximately 167 feet upstream of Jersey Flat Bridge	+2933	
North Yuba River	Approximately 5.45 miles downstream of Goodyears Bar Bridge.	+2645	Unincorporated Areas of Sierra County.
	Approximately 0.38 mile upstream of Goodyears Bar Bridge.	+2974	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Sierra County

Maps are available for inspection at the Sierra County Courthouse Annex, 101 Courthouse Square, Downieville, CA 95936.

Hernando County, Florida, and Incorporated Areas Docket No.: FEMA–B–1149			
Blue Sink Watershed	Approximately 700 feet downstream of Duck Pond Road (at Junction 1NP0170).	+41	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of Chinsegut Hill Road (at Junction 1NE0500).	+236	
Bystre Lake Watershed	Approximately 280 feet downstream of Weatherly Road (at Junction 2NG1980).	+56	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 2,800 feet upstream of Griffin Road (at Junction 2NC1010).	+256	
Centralia Watershed	Approximately 1 mile downstream of the intersection of U.S. Route 19 and Knuckey Road (at Junction 3NJ1550).	+8	Unincorporated Areas of Hernando County.
	Approximately 1,200 feet upstream of Barrientos Lane (at Junction 3NR2100).	+186	
Chassahowitzka River Watershed.	Approximately 850 feet downstream of the intersection U.S. Route 19 and Nicasio Jay Avenue (at Junction 4NK1450).	+7	Unincorporated Areas of Hernando County.
	Approximately 2,000 feet upstream of the intersection of Citrus Road and Thompson Loop (at Junction 4NC0900).	+158	
Croom Watershed	Approximately 1,000 feet downstream of Malvern Street (at Junction 6NA0266).	+42	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 400 feet upstream of La Ruth Road (at Junction 6NC0405).	+201	
Eastern Hernando Withlacoochee River Watershed.	Approximately 2,600 feet downstream of the intersection of Nobleton Croom Road and Trail 9 (at Junction 7NB1530).	+41	Unincorporated Areas of Hernando County.
	Approximately 2,000 feet upstream of the intersection of Poe County Lane and Power Line Road (at Junction 7NH0398).	+152	
Little Withlacoochee River Watershed.	Approximately 2,300 feet downstream of End of Nations Road, at the confluence of the Withlacoochee and Little Withlacoochee Rivers (at Junction 8NE0020).	+56	Unincorporated Areas of Hernando County.
	Approximately 600 feet upstream of Carter Pond Road (at Junction 8NA9044).	+90	
Lizzie Hart Sink Watershed	Approximately 50 feet downstream of the intersection of Brittle Road and Forest 24 Road (at Junction 9NF0040).	+43	Unincorporated Areas of Hernando County.
	Approximately 5,000 feet upstream of the intersection of Jones Road and Snow Hill Road (at Junction 9NC0330).	+164	
McKethan Watershed	Approximately 3,000 feet downstream of U.S. Route 41 and the Citrus County boundary (at Junction 10NF1000).	+38	Unincorporated Areas of Hernando County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 850 feet upstream of the intersection of Chinsegut Hill Road and Pilots Path (at Junction 10NC0012).	+233	
Oman Quarry Watershed	Approximately 220 feet downstream of Windjammer Drive (at Junction 11NB0070).	+9	Unincorporated Areas of Hernando County.
	Approximately 50 feet upstream of the intersection of Gerbert Street and William Street (at Junction 11NI0080).	+37	
Powell Watershed	Approximately 750 feet downstream of State Prison Drive (at Junction 13NB0095).	+62	City of Brooksville, Unincorporated Areas of Hernando County.
	Approximately 2,000 feet upstream of the intersection of Powell Road and Mars Road (at Junction 13NK0240).	+134	
Spring Hill Lakes Watershed	Approximately 4,500 feet downstream of the intersection of Suzanne Drive and Commercial Way (at Junction 14NAA0080).	+10	Town of Weeki Wachee, Unincorporated Areas of Hernando County.
	Approximately 50 feet upstream of the intersection of Palmgren Lane and Mariner Boulevard (at Junction 14NG0425).	+69	
Toachodka Watershed	Approximately 600 feet downstream of the intersection of Hickory Hill Road and Lockhart Road (at Junction 16NE0510).	+64	Unincorporated Areas of Hernando County.
	Approximately 2,100 feet upstream of the intersection of Spring Hill Highway and Rosecrans Street (at Junction 16NA2680).	+225	
Tooke Watershed	Approximately 1,600 feet downstream of Porpoise Street (at Junction 17NK1000).	+1	Town of Weeki Wachee, Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Star Road and Madison Street (at Junction 17NB5230).	+107	
Weeki Wachee Prairie Watershed.	Approximately 400 feet downstream of the intersection of Azora Road and Watt Avenue (at Junction 18NA2170).	+19	Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Spring Hill Drive and Whitewood Avenue (at Junction 18NB1065).	+76	
Willow Sink Watershed	Approximately 100 feet downstream of the intersection of Lynn Road and India Drive (at Junction 19NG2360).	+19	Unincorporated Areas of Hernando County.
	Approximately 100 feet upstream of the intersection of Star Road and Jayson Road (at Junction 19WISCON1).	+101	
Wiscon Watershed	Approximately 380 feet downstream of the intersection of Elwood Road and Tacoma Avenue (at Junction 20NS0200).	+25	Unincorporated Areas of Hernando County.
	Approximately 800 feet upstream of Dusty Pine Trail (at Junction 20NK0034).	+153	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Brooksville
Maps are available for inspection at 201 Howell Avenue, Brooksville, FL 34601.

Town of Weeki Wachee
Maps are available for inspection at 6131 Commercial Way, Weeki Wachee, FL 34606.

Unincorporated Areas of Hernando County
Maps are available for inspection at 20 North Main Street, Brooksville, FL 34601.

Putnam County, Florida, and Incorporated Areas
Docket No.: FEMA–B–1163

Devall Branch	Approximately 181 feet downstream of the railroad	+6	Unincorporated Areas of Putnam County.
	Just downstream of Davis Lake Road	+60	
Two Mile Creek	Just downstream of Cherry Trail	+6	City of Palatka, Unincorporated Areas of Putnam County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unnamed Tributary	Approximately 251 feet upstream of Mellon Road	+57	Unincorporated Areas of Putnam County.
	Approximately 84 feet upstream of the confluence with Two Mile Creek.	+12	
	Approximately 184 feet upstream of Old Peniel Road	+51	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Palatka

Maps are available for inspection at 201 North 2nd Street, Palatka, FL 32177.

Unincorporated Areas of Putnam County

Maps are available for inspection at 515 Reid Street, Building 1D, Palatka, FL 32177.

Montgomery County, Indiana, and Incorporated Areas
Docket No.: FEMA–B–1145

Dry Branch	At the confluence with Sugar Creek	+659	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 0.5 mile upstream of Joe Allen Parkway	+766	
Sugar Creek	Approximately 1.2 miles downstream of NYC Railroad	+647	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 0.38 mile upstream of I–74	+689	
Unnamed Tributary Dry Branch	At the confluence with Dry Branch	+698	City of Crawfordsville, Unincorporated Areas of Montgomery County.
	Approximately 260 feet upstream of County Road 150 South.	+791	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Crawfordsville

Maps are available for inspection at the Planning and Community Development Department, 300 East Pike Street, Crawfordsville, IN 47933.

Unincorporated Areas of Montgomery County

Maps are available for inspection at the Montgomery County South Boulevard Building, 110 West South Boulevard, Crawfordsville, IN 47933.

Wayne County, Michigan (All Jurisdictions)
Docket Nos.: FEMA–B–1041 and FEMA–B–1164

Apple Run/Horner Drain	At the confluence with Sines Drain	+688	Township of Canton, Township of Van Buren.
	At the downstream side of Beck Road	+689	
Bakewell Tile	At the confluence with Bell Branch	+671	City of Livonia.
Extension Bell Branch	At the downstream side of Newburgh Road	+672	
	At the upstream side of Ellen Drive	+654	City of Livonia.
	At the downstream side of 5 Mile Road	+671	
Belleville Lake	Entire shoreline within community	+653	City of Belleville, Township of Van Buren.
Bingell Drain	At the upstream side of Hannan Road	+662	Township of Canton.
	Approximately 30 feet upstream of Hannan Road	+663	
Bird Marsh Drain	At the confluence with Day and Cutter Drain	+666	Township of Sumpter.
	At the downstream side of Judd Road	+676	
Blakely Drain	Approximately 575 feet west of Telegraph Road and just south of Pennsylvania Road.	+610	Charter Township of Brownstown.
	Approximately 400 feet west of Beech Daly Road and just south of Pennsylvania Road.	+612	
	At the upstream side of Pennsylvania Road	+615	
	Approximately 50 feet upstream of Pennsylvania Road	+615	
Blakely Drain	At the upstream side of King Road	+593	City of Riverview.
	Approximately 300 feet east of Cascade Drive	+593	
Bradshaw Drain	At the upstream side of Oakville-Waltz Road	+642	Township of Sumpter.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At the downstream side of Rawsonville Road	+667	
Branch No. 1 Mosquito Drain	At the confluence with Mosquito Drain	+624	Township of Sumpter, Township of Huron.
	Approximately 0.7 mile upstream of Arkona Road	+627	
Brooks Drain	At the confluence with the Huron River	+616	Township of Sumpter.
	At the downstream side of Haggerty Road	+655	
Brownstown Creek	Approximately 1,500 feet upstream of Gudith Road	+599	Charter Township of Brownstown, City of Woodhaven.
	Approximately 0.7 mile downstream of Sibley Road	+615	
Carroll Drain	At the confluence with Burnap Drain	+631	Township of Sumpter.
	At the downstream side of Martinsville Road	+638	
Clark-Morey Drain	At the confluence with Lords Drain	+631	Township of Sumpter.
	Approximately 200 feet downstream of Arkona Road	+645	
Day and Cutter Drain	At the confluence with Bradshaw Drain	+666	Township of Sumpter.
	At the downstream side of Judd Road	+674	
Deacon Drain	Approximately 75 feet northeast of the intersection of Ethel Street and Outer Drive.	+583	City of Detroit.
	Approximately 175 feet northeast of the intersection of Bassett Street and Outer Drive.	+583	
Denton and Branch Drain	At the confluence with Apple Run	+688	Township of Van Buren.
	Approximately 1,650 feet upstream of Beck Road	+688	
Desbrow Drain	At the upstream side of Oakville-Waltz Road	+625	Township of Sumpter.
	At the downstream side of Judd Road	+674	
Detroit River	At the downstream side of Ambassador Bridge	+578	City of Detroit, City of Grosse Pointe Park.
	At the confluence with Lake St. Clair	+579	
Fellows Creek	At the confluence with the Lower River Rouge	+654	Township of Canton.
	Approximately 175 feet downstream of Canton Center Road.	+688	
Frank and Poet Drain	Approximately 80 feet southeast of Allen Road and Orchard Avenue.	+601	City of Southgate.
	Approximately 275 feet southeast of Allen Road and Orchard Avenue.	+601	
Frank and Poet Drain	At the upstream side of Eureka Road	+605	City of Taylor.
	At the downstream side of Inkster Road	+623	
Green Meadow Drain	At the confluence with Tonquish Creek	+684	Township of Canton.
	Approximately 850 feet upstream of Morton Taylor Road	+686	
Head Drain	At the downstream side of Bemis Road	+670	Township of Sumpter, Township of Van Buren.
	At the downstream side of Lohr Road	+684	
Huntington Creek	Approximately 60 feet east of the intersection of Pennsylvania Avenue and 13th Street.	+583	City of Wyandotte.
	Approximately 50 feet east of the intersection of Pennsylvania Avenue and 13th Street.	+583	
Huron River	At the confluence with Lake Erie	+578	Charter Township of Brownstown.
	Approximately 0.75 mile northwest of the intersection of Jefferson Avenue and Harbin Road.	+578	
Huron River	Approximately 1,450 feet southeast of the intersection of Huron River Drive and River Lane.	+597	Township of Huron.
	Approximately 1,300 feet southeast of the intersection of Huron River Drive and River Lane.	+597	
Johnson Drain	Approximately 300 feet upstream of Fairbrook Street	+788	Charter Township of Plymouth, Township of Northville.
	Approximately 0.8 mile upstream of 5 Mile Road	+840	
Johnson Drain Tributary	At the confluence with Johnson Drain	+811	Township of Northville.
	Approximately 0.5 mile upstream of 7 Mile Road	+857	
Jones Drain	At the confluence with the Huron River	+578	Charter Township of Brownstown.
	At the downstream side of Main Park Road	+578	
King Drain	At the confluence with North Branch Swan Creek	+633	Township of Sumpter.
	Approximately 0.6 mile downstream of Judd Road	+637	
Lake Erie	Entire shoreline within community	+578	Charter Township of Brownstown.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Lake St. Clair	Entire shoreline within community	+579	City of Grosse Pointe Farms; City of Grosse Pointe; City of Grosse Pointe Park; Village of Grosse Pointe Shores, A Michigan City.
Lamke Drain	At the confluence with Bradshaw Drain	+647	Township of Sumpter.
	At the downstream side of Sherwood Road	+651	
Lords Drain	At the confluence with Disbrow Drain	+628	Township of Sumpter.
	At the downstream side of Sumpter Road	+639	
Lower River Rouge	At the upstream side of Hannan Road	+653	Township of Canton.
	At the upstream side of Ridge Road	+713	
Marsh Creek	Approximately 400 feet south of Van Horn Road	+586	City of Trenton.
	At the upstream side of Van Horn Road	+586	
	Approximately 1,400 feet northwest of the intersection of Marian Drive and Longmeadow Drive.	+589	
McClaughrey Drain	At the downstream side of Van Born Road	+662	City of Romulus, City of Wayne, Township of Van Buren.
	At the downstream side of I–275 North	+669	
Morrison Drain	At the confluence with Silver Creek	+578	Charter Township of Brownstown.
	Approximately 700 feet downstream of Woodruff Road	+578	
Mosquito Drain	At the upstream side of Clark Road	+624	Township of Huron, Township of Sumpter.
	At the downstream side of Haggerty Road	+628	
Mott Drain	At the downstream side of Sheldon Road	+672	Township of Canton.
	At the confluence with the Lower River Rouge	+672	
No. 1 Drain	At the confluence with North Branch Swan Creek	+648	Township of Sumpter.
	Approximately 110 feet downstream of Willis Road	+652	
No. 3 Drain	At the confluence with North Branch Swan Creek	+656	Township of Sumpter.
	At the downstream side of Clay Road	+658	
North Branch Ecorse Creek	Approximately 90 feet downstream of Frank Avenue	+591	City of Melvindale.
	Approximately 500 feet east of Enterprise Drive	+594	
North Branch Swan Creek (lower).	At the downstream side of Clark Road	+626	Township of Huron, Township of Sumpter.
	At the downstream side of Judd Road	+645	
North Branch Swan Creek (upper).	At the upstream side of Elwell Road	+677	Township of Sumpter, Township of Van Buren.
	At the downstream side of Rawsonville Road	+689	
Olmstead Drain	At the confluence with Smith Creek	+587	City of Flat Rock.
	At the downstream side of Olmstead Road	+587	
Pickering Drain	At the confluence with North Branch Swan Creek	+632	Township of Sumpter.
	At the upstream side of Haggerty Road	+632	
River Rouge	At the confluence with the Detroit River	+577	City of Detroit.
	Approximately 0.5 mile upstream of Jefferson Avenue	+577	
Silver Creek	Approximately 400 feet downstream of Jefferson Avenue	+578	Charter Township of Brownstown, City of Rockwood.
	At the downstream side of the railroad	+578	
Silver Creek	Approximately 1,300 feet southwest of the intersection of Woodruff Road and Torry Avenue.	+586	City of Rockwood.
	Approximately 1,650 feet southwest of the intersection of Woodruff Road and Torry Avenue.	+586	
Sines Drain	At the confluence with the Lower River Rouge	+667	Township of Canton, Township of Van Buren.
	At the downstream side of Mott Road	+707	
Smith Creek (lower)	At the confluence with Silver Creek	+578	Charter Township of Brownstown, City of Rockwood.
	At the downstream side of Huron River Drive	+578	
Smith Creek (lower)	At the upstream side of I–75 South	+587	Charter Township of Brownstown, City of Flat Rock, City of Woodhaven.
	Approximately 875 feet downstream of Telegraph Road	+599	
Smith Creek (upper)	At the upstream side of Beech Daly Road	+607	Charter Township of Brownstown, Township of Huron.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At the upstream side of Inkster Road	+616	
Smith Drain	At the upstream side of Puritan Street	+617	City of Detroit.
	Approximately 160 feet upstream of Puritan Street	+617	
South Branch Tonquish Creek	At the upstream side of Main Street	+703	Charter Township of Plymouth, City of Plymouth.
	At the downstream side of Beck Road	+790	
Tonquish Creek	Approximately 300 feet downstream of Holiday Boulevard	+660	Charter Township of Plymouth, City of Plymouth, Township of Canton.
	At the downstream side of Territorial Road	+770	
Tonquish Creek	Approximately 1,100 feet downstream of Wayne Road	+636	City of Livonia.
	Approximately 700 feet downstream of Wayne Road	+636	
Travis Drain	At the confluence with Willow Creek	+680	Township of Canton.
	At the downstream side of Sheldon Road	+680	
Upper River Rouge	At the confluence with the River Rouge	+617	City of Detroit, Township of Redford.
	Approximately 1,800 feet upstream of 6 Mile Road	+625	
Weightman and Branch Drain	At the confluence with North Branch Swan Creek	+638	Township of Sumpter.
	Approximately 0.5 mile upstream of North Branch Swan Creek.	+638	
Willow Creek	Approximately 1,800 feet upstream of Lotz Road	+669	Township of Canton.
	At the downstream side of Canton Center Road	+702	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Charter Township of Brownstown
Maps are available for inspection at 21313 Telegraph Road, Brownstown, MI 48183.

Charter Township of Plymouth
Maps are available for inspection at 9955 North Haggerty Road, Plymouth, MI 48170.

City of Belleville
Maps are available for inspection at 6 Main Street, Belleville, MI 49615.

City of Detroit
Maps are available for inspection at 660 Woodward Avenue, Suite 1800, Detroit, MI 48226.

City of Flat Rock
Maps are available for inspection at 25500 Gibraltar Road, Flat Rock, MI 48134.

City of Grosse Pointe
Maps are available for inspection at 17147 Maumee Avenue, Grosse Pointe, MI 48230.

City of Grosse Pointe Farms
Maps are available for inspection at 90 Kerby Road, Grosse Pointe Farms, MI 48236.

City of Grosse Point Park
Maps are available for inspection at 15115 Jefferson Avenue, Grosse Pointe Park, MI 48230.

City of Livonia
Maps are available for inspection at 33000 Civic Center Drive, Livonia, MI 48154.

City of Melvindale
Maps are available for inspection at 3100 Oakwood Boulevard, Melvindale, MI 48122.

City of Plymouth
Maps are available for inspection at 201 South Main Street, Plymouth, MI 48170.

City of Riverview
Maps are available for inspection at 14100 Civic Park Drive, Riverview, MI 48193.

City of Rockwood
Maps are available for inspection at 32409 Fort Road, Rockwood, MI 48173.

City of Romulus
Maps are available for inspection at 11111 Wayne Road, Romulus, MI 48174.

City of Southgate
Maps are available for inspection at 14400 Dix-Toledo Highway, Southgate, MI 48195.

City of Taylor
Maps are available for inspection at 25605 Northline Road, Taylor, MI 48180.

City of Trenton
Maps are available for inspection at 2674 West Jefferson, Trenton, MI 48183.

City of Wayne

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at 4001 South Wayne Road, Wayne, MI 48184.

City of Woodhaven

Maps are available for inspection at 21869 West Road, Woodhaven, MI 48183.

City of Wyandotte

Maps are available for inspection at 3131 Biddle Avenue, Wyandotte, MI 48192.

Township of Canton

Maps are available for inspection at 1150 South Canton Center Road, Canton, MI 48188.

Township of Huron

Maps are available for inspection at 22950 Huron River Drive, New Boston, MI 48164.

Township of Northville

Maps are available for inspection at 44405 6 Mile Road, Northville, MI 48168.

Township of Redford

Maps are available for inspection at 12200 Beech Daly Road, Redford, MI 48239.

Township of Sumpter

Maps are available for inspection at 23480 Sumpter Road, Belleville, MI 48111.

Township of Van Buren

Maps are available for inspection at 46425 Tyler Road, Belleville, MI 48111.

Village of Grosse Pointe Shores, A Michigan City

Maps are available for inspection at 795 Lake Shore Road, Grosse Pointe Shores, MI 48236.

Coahoma County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1159

Mill Creek	Approximately 200 feet upstream of North Desoto Avenue	+157	City of Clarksdale, Town of Lyon.
	Approximately 650 feet upstream of Barkley Road	+162	
Moore Bayou	Approximately 0.72 mile downstream of Coldwater Road	+170	Town of Jonestown, Unincorporated Areas of Coahoma County.
	Approximately 0.57 mile upstream of Coldwater Road	+170	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Clarksdale

Maps are available for inspection at City Hall, 115 1st Street, Clarksdale, MS 38614.

Town of Jonestown

Maps are available for inspection at the Town Hall, 219 Main Street, Jonestown, MS 38639.

Town of Lyon

Maps are available for inspection at the Town Hall, 111 Park Street, Lyon, MS 39645.

Unincorporated Areas of Coahoma County

Maps are available for inspection at the Coahoma County Courthouse, 121 Sunflower Avenue, Clarksdale, MS 38614.

Crook County, Oregon, and Incorporated Areas
Docket No.: FEMA–B–1163

Crooked River	Approximately 2.6 miles downstream of Ochoco Highway	+2833	Unincorporated Areas of Crook County.
	Approximately 2.0 miles downstream of Ochoco Highway	+2836	
Ochoco Creek	Approximately 0.7 mile downstream of Northwest Madras Highway.	+2834	City of Prineville, Unincorporated Areas of Crook County.
	Just downstream of Wayland Road	+3005	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Prineville

Maps are available for inspection at City Hall, 387 Northeast 3rd Street, Prineville, OR 97754.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Unincorporated Areas of Crook County			
Maps are available for inspection at the Crook County Courthouse, 300 Northeast 3rd Street, Prineville, OR 97754.			
Putnam County, West Virginia, and Incorporated Areas Docket No.: FEMA–B–1128			
Buffalo Creek	At the confluence with the Kanawha River	+575	Town of Eleanor, Unincorporated Areas of Putnam County.
	Approximately 1.77 miles upstream of the Town of Eleanor boundary.	+577	
Mill Creek	At the confluence with Hurricane Creek	+626	City of Hurricane, Unincorporated Areas of Putnam County.
	Approximately 200 feet downstream of White Rock Drive	+678	
Poplar Fork	At the confluence with Hurricane Creek	+585	Unincorporated Areas of Putnam County.
	Approximately 95 feet downstream of Cow Creek Road	+585	
Poplar Fork	Just upstream of the confluence with Long Branch	+626	Unincorporated Areas of Putnam County.
	Approximately 130 feet downstream of State Route 34	+646	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Hurricane
Maps are available for inspection at City Hall, 3255 Teays Valley Road, Hurricane, WV 25526.

Town of Eleanor
Maps are available for inspection at the Town Hall, 401 Roosevelt Boulevard, Eleanor, WV 25070.

Unincorporated Areas of Putnam County
Maps are available for inspection at the Putnam County Office of Planning and Infrastructure, 3389 Winfield Road, Winfield, WV 25213.

Ritchie County, West Virginia, and Incorporated Areas Docket No.: FEMA–B–1158			
North Fork Hughes River	Approximately 0.55 mile downstream of Main Street	+670	Town of Cairo.
	Approximately 0.41 mile upstream of Main Street	+673	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Town of Cairo
Maps are available for inspection at the Cairo Town Hall, 115 East Main Street, Harrisville, WV 26362.

Douglas County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1158			
Bond Lake	Entire shoreline within community	+1035	Unincorporated Areas of Douglas County.
Lake Minnesuing	Entire shoreline within community	+1117	Unincorporated Areas of Douglas County.
Lake Nebagamon	Entire shoreline within community	+1111	Village of Lake Nebagamon.
Lake Superior	Entire shoreline within community	+605	City of Superior, Unincorporated Areas of Douglas County, Village of Oliver, Village of Superior.
Leader Lake	Entire shoreline within community	+1036	Unincorporated Areas of Douglas County.
Lower Eau Claire Lake	Entire shoreline within community	+1124	Unincorporated Areas of Douglas County.
Lyman Lake	Entire shoreline within community	+1190	Unincorporated Areas of Douglas County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Nemadji River	Just downstream of the Hammond Avenue abandoned bridge.	+623	Village of Superior.
	Approximately 1 mile upstream of the Hammond Avenue abandoned bridge.	+624	
St. Croix Flowage	Entire shoreline within community	+1018	Unincorporated Areas of Douglas County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Superior
Maps are available for inspection at 1316 North 4th Street, Superior, WI 54880.

Unincorporated Areas of Douglas County
Maps are available for inspection at 1313 Belknap Street, Superior, WI 54880.

Village of Lake Nebagamon
Maps are available for inspection at 11596 East Waterfront Street, Lake Nebagamon, WI 54849.

Village of Oliver
Maps are available for inspection at 2931 South Winona Avenue, Superior, WI 54880.

Village of Superior
Maps are available for inspection at 6702 Ogden Avenue, Superior, WI 54880.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: January 12, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–1432 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 20, 36, 51, 54, 61, 64 and 69

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92 and 96–45; WT Docket No. 10–208; Report No. 2945]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support et al.

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, Petitions for Reconsideration (Petitions) have been filed in the Commission's Rulemaking proceeding concerning rules that comprehensively reform and modernize the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation.

DATES: Oppositions to the Petitions must be filed by February 9, 2012. Replies to an opposition must be filed February 21, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Amy Bender, Wireline Competition Bureau, (202) 418–1469, Victoria Goldberg, Wireline Competition Bureau, (202) 418–7353, and Margaret Wiener, Wireless Telecommunications Bureau, (202) 418–2176 or TTY: (202) 418–0484

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2945, released January 12, 2012. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–(800) 378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Connect America Fund: A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support et al., published at 76 FR 73830, November 29, 2011 in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, and published pursuant to 47 CFR 1.429(e). *See* 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)).

Number of Petitions Filed: 24.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–1503 Filed 1–24–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[Correction; FAC 2005–55; FAR Case 2005–037; Item III; Docket 2006–0020, Sequence 26]

RIN 9000–AK55

Federal Acquisition Regulation; Brand-Name Specifications; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Correction.

SUMMARY: This document contains a correction to the final rule that was published in the **Federal Register** at 77 FR 194 on January 3, 2012.

DATES: *Effective Date:* February 2, 2012.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, at 1275 First Street NE., Washington, DC 20417, or (202) 501–4755, for information pertaining to status or publication schedules. Please cite FAC 2005–55, FAR Case 2005–037; Correction.

SUPPLEMENTARY INFORMATION:

Background

DoD, GSA, and NASA have adopted as final, with changes, the interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Management and Budget memoranda on brand-name specifications, FAR Case 2005–037, Brand-Name Specifications, which published in the **Federal Register** at 77 FR 189 on January 3, 2012.

Correction

In the final rule document appearing at 77 FR 189 on January 3, 2012, on page 194, first column, amendatory instruction 9.b., for FAR section 16.505, is corrected to read as follows:

''b. Redesignating paragraphs (a)(4) through (a)(11) as paragraphs (a)(5) through (a)(12), respectively; and''

Dated: January 18, 2012.

Laura Auletta,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–1438 Filed 1–24–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02]

RIN 0648–XA944

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the southern Florida west coast subzone in the exclusive economic zone (EEZ) to commercial king mackerel fishing using run-around gillnets. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 6 a.m., local time, January 21, 2012, through 6 a.m., local time, January 21, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gerhart, telephone: (727) 824–5305, email: *Susan.Gerhart@noaa.gov.*

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, and cobia) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001), NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. The quota implemented for the southern Florida west coast subzone is 1,040,625 lb (472,020 kg). That quota is further divided into two equal quotas of 520,312 lb (236,010 kg) for vessels in each of two groups fishing with run-around gillnets and hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*)(*i*)).

The southern subzone is that part of the Florida west coast subzone, which from November 1 through March 31, extends south and east from 26°19.8″ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) to 25°20.4″ N. lat. (a line directly east from the Monroe/Miami-Dade County, FL, boundary), i.e., the area off Collier and Monroe Counties. From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone which is between 26°19.8″ N. lat. (a line directly west from the Lee/Collier County, FL, boundary) and 25°48′ N. lat. (a line directly west from the Collier/Monroe County, FL, boundary), i.e., the area off Collier County (50 CFR 622.42(c)(1)(i)(A)(*3*)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial sector when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the Federal Register. NMFS has determined that the commercial quota of 520,312 lb (236,010 kg) for Gulf group king mackerel for vessels using run-around gillnet gear in the southern Florida west coast subzone will be reached on January 20, 2012. Accordingly, commercial fishing for such vessels in the southern Florida west coast subzone is closed at 6 a.m., local time, January 21, 2012, through 6 a.m., local time, January 21, 2013, the beginning of the next fishing season, i.e., the day after the 2013 Martin Luther King Jr. Federal holiday.

Classification

This action responds to the best available information recently obtained from the fisheries. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the fishery constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B). Such procedures would be unnecessary because the rule implementing the quota and the associated requirement for closure of the commercial harvest when the quota is reached or projected to be reached has already been subject to notice and comment, and all that remains is to notify the public of the closure.

Providing prior notice and opportunity for public comment on this

action would be contrary to the public interest because any delay in the closure of the commercial harvest could result in the commercial quota being exceeded. There is a need to immediately implement this action to protect the king mackerel resource because the capacity of the fishing fleet allows for rapid harvest of the quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: January 20, 2012.

Steven Thur,

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

[FR Doc. 2012–1565 Filed 1–20–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XA948

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant Atlantic bluefin tuna (BFT) until the General category reopens on June 1, 2012. This action is being taken to prevent overharvest of the General category January BFT subquota.

DATES: Effective 11:30 p.m., local time, January 22, 2012, through May 31, 2012.

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

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

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The current General category baseline quota is 435.1 mt, with 23.1 mt allocated for the January time period. On November 30, 2011, NMFS published a final rule to address adjustments to the General and Harpoon category regulations. Among other actions, this final rule allowed the General category BFT season to remain open until the January subquota is reached or March 31 (whichever happens first).

Based on the best available BFT landings information for the General category BFT fishery (i.e., 17 mt of the available 23.1 mt landed as of January 17, 2012), NMFS has determined that the General category January subquota will be reached by January 22, 2012. Therefore, through May 31, 2012, fishing for, retaining, possessing, or landing large medium or giant BFT by persons aboard vessels permitted in the Atlantic Tunas General and HMS Charter/Headboat categories (while fishing commercially) must cease at 11:30 p.m. local time on January 22, 2012. The General category will reopen automatically on June 1, 2012, for the June through August subperiod. This action is taken consistent with the regulations at §§ 635.27(a)(1)(iii) and 635.28(a)(1). The intent of this closure is to prevent overharvest of the General category January BFT subquota.

Limited catch and release fishing may continue subject to the requirements of the catch-and-release and tag-and-release programs. Fishermen may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Fishermen are also reminded that all BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the Careful Catch and Release brochure available at *www.nmfs.noaa.gov/sfa/hms/*.

If needed, subsequent General category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *www.hmspermits.gov,* for updates.

Classification

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

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the General category January BFT fishery is necessary to prevent overharvest of the General category January BFT subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.gov*.

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the General category. NMFS must close the General category January BFT fishery before landings of large medium and giant BFT exceed the available subquota. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under §§ 635.27(a)(1)(iii) and 635.28(a)(1), and is exempt from review under Executive Order 12866.

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

Dated: January 19, 2012.

Carrie Selberg,

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

[FR Doc. 2012–1560 Filed 1–20–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA954

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2012, through 1200 hrs, A.l.t., March 10, 2012.

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

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

The A season allowance of the 2012 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 5,787 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011) and inseason adjustment (77 FR 438, January 5, 2012).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2012 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,537 mt and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 19, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 20, 2012.

Steven Thur,

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

[FR Doc. 2012–1562 Filed 1–20–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA955

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by pot catcher/processors in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the A season apportionment of the 2012 Pacific cod total allowable catch (TAC) specified for pot catcher/processors in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 23, 2012, through 1200 hrs, A.l.t., September 1, 2012.

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

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

The A season apportionment of the 2012 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI is 1,777 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011) and inseason adjustment (76 FR 81875, December 29, 2011).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the A season apportionment of the 2012 Pacific cod TAC allocated as a directed fishing allowance to pot catcher/processors in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific

cod by pot catcher/processors in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and § 679.25(c)(1)(ii) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by pot catch processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 19, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: January 20, 2012.

Steven Thur,

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

[FR Doc. 2012–1563 Filed 1–20–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 16
Wednesday, January 25, 2012

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

[Docket No. PRM–31–5; NRC–2005–0018; NRC–2008–0272]

Withdrawal of Proposed Rule and Closure of Petition for Rulemaking: Organization of Agreement States and Florida Department of Health, Bureau of Radiation Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Withdrawal of proposed rule and closure of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is closing a petition for rulemaking (PRM–31–5) submitted by the Organization of Agreement States, Inc. (OAS). The petition requested that the NRC amend its regulations to strengthen the regulation of radioactive materials by requiring a specific license for higher-activity devices that are currently available under a general license, and change the compatibility designation of applicable regulations from category B to category C. The petition also addresses a request filed by the Florida Department of Health, Bureau of Radiation Control, to change the compatibility category of a certain part of the applicable regulation from category B to category C. In response to the petition, the NRC developed a proposed rule that would have changed the compatibility of the applicable regulations, and would have limited the quantity of byproduct material contained in a generally-licensed device to below one-tenth of the International Atomic Energy Agency (IAEA) Category 3 thresholds. After further review, the NRC has decided to withdraw the proposed rule and to change the compatibility designation of the applicable regulations from category B to category C.

DATES: The proposed rule to limit the quantity of byproduct material contained in a generally licensed device (74 FR 38372; August 3, 2009) is withdrawn on January 25, 2012. The docket for PRM–31–5 is closed on January 25, 2012.

ADDRESSES: You can access publicly available documents related to proposed rule or the petition using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1F21, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Document Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online at the NRC's Library at *http://www.nrc.gov/NRC/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 PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2005–0018 or NRC–2008–0272. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3781, email: *Solomon.Sahle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

In its PRM, the OAS requested that the NRC amend its regulations to require specific licensing for devices exceeding the registration quantity limits in Title 10 of the Code of Federal Regulations (10 CFR) 31.5(c)(13)(i). Additionally, OAS requested that the NRC revise the compatibility category of 10 CFR 31.6 from category B to category C, which OAS believes would allow States to better track service providers and distributors of generally-licensed devices. In addition, the Florida Department of Health, Bureau of Radiation Control, submitted a separate request to change the compatibility category of 10 CFR 31.5(c)(13)(i) from category B to category C, which would allow the State to continue to require registration of other generally-licensed devices in addition to those currently registered by the NRC. Florida's request (ADAMS Accession No. ML052700236) was included with the OAS petition under PRM–31–5 (ADAMS Accession No. ML051940187).

Public Comments on the Petition

The NRC published a **Federal Register** notice requesting public comment on PRM–31–5 on December 20, 2005 (70 FR 75423). The comment period closed on March 6, 2006, and the NRC received four comment letters from States and industry. The commenters had differing views on using the registration levels to require general licensees to become specific licensees, and on changing the compatibility categories.

Comments on requiring some general licensees to become specific licensees.

Comment: One commenter supported adding a requirement to specifically license higher-activity-level devices that are currently available under a general license. The commenter argued that the requirement would enhance security and accountability of these devices, and would prevent aggregation of radioactive sources in the devices to quantities of concern. The commenter noted that the regulatory change to require higher-activity-level, generally-licensed devices to have a specific license was long overdue from a safety and security perspective, and that the rule would not impose a significant burden to implement.

Comment: Three commenters did not support requiring higher-activity-level, generally-licensed devices to obtain a specific license. The commenters include an Agreement State and two generally-licensed device manufacturers and distributors. These commenters believed that the general-license regulatory approach should remain as is. The Agreement State commenter stated that, in its jurisdiction, generally-licensed devices are registered and tracked to a very high standard. Another commenter stated that the proposed change would break with the established procedures for device

review conducted during the device-approval process.

This commenter also stated that the current criteria in 10 CFR 32.51 is used to determine if a particular device warrants being specifically or generally licensed. These criteria take into account additional factors other than the activity of the source and include requirements for prototype testing, potential dose considerations, etc. This commenter stated that the NRC and the Agreement States have been using these criteria for many years and that these proposed changes would be inconsistent with established policy. Another commenter, who represents several manufacturers, distributors, and providers of services for radiological devices, stated that there is no demonstrated safety or security justification for the changes requested in the PRM. This commenter also stated that the changes would not increase the security or the safety of generally-licensed devices, and he is not aware of any safety or security concerns that could not be equally, and in some cases better, addressed by the current registration program. Under the current registration process, general licensees must submit signed annual reports to the NRC or the Agreement State detailing what devices they possess and any changes from their previous reports. Thus, each licensee has a designated employee review their inventory and compliance on an annual basis. This process also allows the NRC or the Agreement State to annually review the general licensees. If there are unresolved discrepancies between annual reports, then the NRC or the Agreement State can require immediate clarification by the licensee. The commenter also stated that under most fixed-gauge specific licenses, there is a 5-year inspection cycle with no interaction between the NRC or the Agreement State and the licensee during that period. Thus, there would be a net decrease in oversight if this proposal is adopted.

These commenters stated that the registration program has been very successful in maintaining awareness of generally-licensed devices and they would not be opposed to seeing the registration and the annual reporting requirements extended to all general licensees, not limited to only certain isotopes and activities.

NRC Response:

In response to the PRM, the NRC developed a proposed rule that would have implemented many of the suggestions in the PRM (74 FR 38372; August 3, 2009). The NRC received public comments on the proposed rule, and considered those comments as part of the development of a draft final rule.

The Commission reviewed the draft final rule, and in the Staff Requirements Memorandum (SRM) for the draft final rule, dated December 2, 2010, the Commission disapproved publication of the final rule (ADAMS Accession No. ML103360262). In their voting records, several Commissioners, like some of the commenters, noted that they did not see a clear safety risk reduction or security enhancement that would justify the proposed threshold for requiring a specific license, or sufficient information on the aggregation of generally-licensed devices for malevolent purposes (ADAMS Accession No. ML103370094).

Comments on the compatibility change.

Comment: Two commenters supported changing the compatibility of 10 CFR 31.5(c)(13)(i) and 10 CFR 31.6 from category B to category C. According to these commenters, multiple Agreement States have long required more stringent regulation of generally-licensed devices than the NRC. As early as 1963, States began to establish additional regulatory requirements, ranging from specific licensing to registration of all generally-licensed devices, to address problems in their States. For the NRC and the Agreement States that did not have a generally-licensed device registration program, the general-license rule was a step forward. However, for those Agreement States that already had a registration program or required a specific license for generally-licensed devices, the general-license rule was a major step backward. The commenters believe that the Commission's decision to broadly apply compatibility B to 10 CFR 31.5 and 10 CFR 31.6 threatens to cancel long-standing State regulatory programs and activities that have helped to improve device accountability and reduce the number of lost sources. The commenters believe that the changes requested in the petition are necessary to enhance the security and accountability of generally-licensed devices. Further, the commenters believe that the change in compatibility category will provide those Agreement States with more stringent regulatory programs the flexibility to continue to impose more stringent requirements than the NRC.

NRC Response:

The NRC agrees with the commenters that the category C designation will allow Agreement States the flexibility to enhance accountability, address issues specific to their jurisdictions, continue programs that have proven beneficial, and adopt requirements based on their specific circumstances and needs.

Comment: Two commenters disagreed with the proposal to revise the compatibility of 10 CFR 31.6 from B to C.

One commenter stated that many States have adopted equivalent provisions to 10 CFR 31.6 in their regulations; however, as a matter of policy, these States still require reciprocity for the servicing of generally-licensed devices even if there are no specifically-licensed materials or activities involved. The purpose of this policy is to track generally-licensed device vendors in the same manner as specific licensees working under reciprocity. The commenter believes that this policy is inconsistent with the intent of the regulations, which are supposed to make it easier for vendors to service generally-licensed devices.

The second commenter stated that the change in compatibility would be overly burdensome and financially detrimental to both manufacturers and licensees that possess generally-licensed devices. According to this commenter, under the current designation of compatibility category B, device manufacturers and service providers are basically working under one set of nationwide regulations. The commenter believes that this situation is far superior to the confusing alternative that would be caused by changing the compatibility of 10 CFR 31.6 to category C. Working under one set of regulations is significantly easier to comply with than working under as many as thirty sets of constantly changing regulations. The commenter believes that this possibility indicates that there are transboundary implications associated with this change. Further, the commenter stated that current 10 CFR 31.6 grants a general license, and changing the compatibility designations from category B to C would allow Agreement States to charge fees for reciprocal recognition of licenses from other Agreement States and the NRC. The commenter believes that general licensees would then pass the cost of these fees on to customers. According to the commenter, the overall purpose of the Atomic Energy Act and the NRC's regulations is to safeguard the public. Changing 10 CFR 31.6 from compatibility category B to C will not enhance either the radiological safety or security of byproduct material. The current compliance level with 10 CFR 31.6 for manufacturers and service providers is very high because the regulations are concise and easy to understand. This commenter believes that a change in the compatibility could result in a significantly more confusing

situation and a decrease in the overall compliance with the regulations.

NRC Response:

The NRC disagrees with the commenters. Changing the compatibility designation of these regulations will not result in increased cost and burden to licensees operating in multiple jurisdictions. The NRC is confident that the Agreement States will exercise this new flexibility in a responsible manner that will continue to allow device manufacturers and service providers to work in multiple jurisdictions without undue burden or cost.

The commenter is correct that the purpose of the Atomic Energy Act is to ensure the protection of public health and safety. The Atomic Energy Act also establishes the Agreement State program, which allows States to assume regulatory authority over the licensing of certain radioactive materials that are used within their borders. As part of the implementation of this program, the NRC established ''compatibility categories'' for its regulations, which determine the degree of flexibility that States have in adopting their regulations. The compatibility category determination for each regulation involves careful review by the NRC to ensure that the national regulatory program is consistent. Where the NRC believes that there are transboundary implications associated with a regulation, the regulation is assigned to compatibility category B, which requires Agreement States to adopt essentially identical requirements. Where the NRC believes that there are not transboundary implications, but that the essential objectives of the regulation need to be adopted, the regulation is assigned to compatibility category C. When adopting compatibility-category-C regulations, the Agreement States can adopt regulations that are more stringent than the NRC's regulations. After extensive review, the NRC has determined that the compatibility changes requested in the PRM do not appear to raise significant transboundary issues. Based upon this determination, the NRC has decided to assign these regulations to compatibility category C.

In its SRM adopting these compatibility changes, the Commission acknowledged that these compatibility changes could result in transboundary problems, if there are unforeseen implementation problems. As directed by the Commission, the staff plans to: (1) Report back within 18 months on which Agreement States, if any, acted to modify their programs as a result of the change in compatibility category, (2) discuss how the programs were modified, (3) analyze the impacts to regulated entities, particularly those operating in more than one State; and (4) suggest corrective actions, if necessary (ADAMS Accession No. ML103360262).

The Proposed Rule

After considering the OAS petition and Florida Department of Health request, the NRC decided to grant the petition (i.e., the NRC agreed to start a rulemaking that would consider the issues raised in the petition; granting a petition does not mean that the NRC will adopt any or all of the requests in a petition) (ADAMS Accession No. ML072640423). On August 3, 2009, the NRC published a proposed rule, ''Limiting the Quantity of Byproduct Material in a Generally Licensed Device'' (74 FR 38372). This proposed rule would have improved the safety and security of devices currently authorized under a general license by requiring a subset of these devices to be specifically licensed. The rulemaking would have amended the NRC's regulations to limit the quantity of certain byproduct material allowed in a generally-licensed device to below one-tenth of the IAEA's Category 3 thresholds; licensees with devices containing byproduct material at or above this limit would be required to obtain a specific license. The NRC also proposed to change the compatibility category of 10 CFR 31.5(a), 10 CFR 31.5 (c)(13)(i), and 10 CFR 31.6 from category B to C.

Public Comments on the Proposed Rule

The comment period for the proposed rule ended on October 19, 2009, and 55 comment letters were received. The commenters on the proposed rule included Federal agencies, States, licensees, industry organizations, environmental advocacy groups, and individuals.

The comments addressed the following areas: (1) The general provisions of the proposed rule; (2) alternatives to the proposed rule; (3) alternative threshold values; (4) proposed changes in compatibility categories from B to C, and discussion of any transboundary issues related to this approach; and (5) the additional revision to 10 CFR 31.5, which would have prohibited specific licensees from possessing a device under a general license. A discussion of each major comment area is summarized as follows:

Comments on the general provisions of the proposed rule.

Comments: Twenty commenters supported the provisions of the proposed rule that would have established a threshold value of one-tenth of Category 3 for material in generally-licensed devices. These 20 commenters included the OAS and 9 individual Agreement States. About the same number of commenters did not support any threshold value for generally-licensed devices; some of these commenters believe that the general license regulatory approach should remain as is, while others offered suggestions for modifying the general license program to achieve the objectives of the proposed rule.

The commenters who supported the proposed rule argued that the proposed rule would increase the safety and security of the sources, by protecting against aggregation of sources to quantities of concern.

These commenters noted that the regulatory change to limit the quantity of byproduct material in a generally-licensed device was long overdue from a safety and security perspective, and that the rule would not impose a significant burden to implement. Finally, the commenters stated that the one-tenth of Category 3 threshold was a reasonable compromise between the need for increased safety and security and the burden imposed by these requirements on affected licensees.

Some of the commenters who opposed the proposed rule questioned whether the NRC had a technical basis to support limiting the material in a generally-licensed device for safety and security reasons. In particular, they argued that there was no credible risk of aggregating generally-licensed devices that are used by industry for manufacturing process control applications. Also, they stated that it was unrealistic to believe that these devices and their sources would be removed from their assemblies. They noted, for example, that these sources are important and vital to the operation of a manufacturing facility. They also argued that the sources are: (1) Firmly mounted in process equipment; (2) surrounded by mechanical components moving at a high rate of speed with restricted access; and (3) within a security perimeter, which includes safeguards against entry by unauthorized people.

These commenters also believe that implementation of the proposed rule would cause a significant cost increase because of the additional requirements associated with a specific license, including training, administration, annual fees, and hiring of a radiation safety officer. Another comment from an industry trade group noted that small companies with few customers spread across a large number of States would

find it prohibitively expensive to conduct business in States that require specific licenses.

Many of the commenters stated that it was unnecessary to require generally-licensed devices to be specifically licensed if they were at or above the threshold level in the proposed rule. These commenters suggested alternatives to enhance the current general license program:

(1) A combination of features such as: (a) Maintaining the existing general license framework, while requiring additional hardening and design features in the devices to make it difficult to remove the sources from the devices; (b) imposing new security requirements in the regulations and in the device registries that would apply to users of the devices; (c) requiring regulators to periodically inspect the generally-licensed devices that meet or exceed the one-tenth of Category 3 threshold values; and (d) requiring device leak tests and shutter checks at 3- or 6-month intervals to improve source accountability;

(2) Strengthening the current general license regulations by: (a) Adding an annual physical inventory requirement for all licensees who possess a generally-licensed device under 10 CFR 31.5; (b) adding a requirement for generation and retention of written records of the physical inventories for review during regulator inspections; and (c) adding a requirement for general licensees to report their physical inventory results to the regulator;

(3) Amending 10 CFR 31.5(a) to exclude all portable devices, to require a specific license for portable devices regardless of their activity level; and

(4) Offering manufacturers and distributors a Master Materials License or a single licensing mechanism that would be valid for work in different regulatory jurisdictions.

Some commenters who supported the proposed rule suggested alternative threshold values for material in a generally-licensed device. These alternatives included: (1) Setting a threshold at IAEA Category 3; (2) considering the aggregate level of byproduct material at a site; (3) applying the threshold to the current activity level of the source instead of the licensed activity; and (4) setting a threshold below one-tenth of Category 3, such as the registration levels in 10 CFR 31.5(c)(13)(i).

NRC Response:

The NRC has decided not to adopt a final rule and is withdrawing the proposed rule. The Commission disapproved the staff's proposal to limit the quantity of byproduct material contained in generally-licensed devices under 10 CFR Part 31 to one-tenth of the IAEA Category 3 threshold. The Commission determined that there is not a clear safety risk reduction or security enhancement that would justify the proposed threshold for requiring a specific license and there is insufficient information to determine that the aggregation of generally-licensed devices for malevolent purposes is a likely scenario.

Comments on changing the compatibility of 10 CFR 31.5(c)(13)(i) and 10 CFR 31.6 from category B to category C.

The NRC received 20 comments on the proposal to change the compatibility of 10 CFR 31.5(c)(13)(i) and 31.6 from category B to category C. The OAS and 13 Agreement States supported the proposal; 5 commenters (2 Agreement States and 3 companies that manufacture, distribute, and service generally-licensed devices) opposed the proposal; and 1 Agreement State supported the compatibility change to 10 CFR 31.5(c)(13)(i) and opposed the compatibility change to 10 CFR 31.6. Commenters who supported the changes noted that the changes in the compatibility categories would allow States to continue to impose more rigorous requirements on their licensees. Many of these States commented that they would not support the proposed rule without an accompanying change in compatibility. The commenters who opposed the proposed compatibility changes noted that current regulations are very clear and that compatibility B ensures a single national standard for generally-licensed devices. These commenters noted that the change in compatibility could result in different sets of rules and guidelines in every State, and would allow Agreement States to arbitrarily set limits on the activity levels of generally-licensed devices that are not based on the risk to public health and safety. Some commenters stated that a change in compatibility would have a significant adverse impact on companies that service generally-licensed devices.

More detailed comment summaries, along with the NRC's responses, are included below.

Comment: The NRC should be adopting more stringent compatibility for its generally-licensed device regulations, which would allow installers and service providers to do their jobs without additional restrictions imposed by the States.

NRC Response:

The NRC appreciates the commenter's concern, but does not believe that compatibility B is necessary in this case. Under the Agreement State program, the NRC has relinquished its regulatory authority over certain radioactive materials in each Agreement State. As part of its oversight of the program, the NRC has established compatibility categories that allow it to ensure that there is a consistent national program in place, while also providing Agreement States with the flexibility to adopt different requirements when possible. In this case, the NRC has concluded that the additional requirements that would be imposed by Agreement State regulators are not a threat to a consistent national program. However, the NRC does recognize that there is the possibility for the Agreement States to adopt regulations in this area that would negatively affect a national program. The NRC is therefore planning to look at any modifications that the Agreement States make in response to this compatibility change, analyze the impacts to the regulated entities and suggest corrective actions, if necessary (ADAMS Accession No. ML103360262).

Comment: One commenter argued that the change in compatibility would result in no increase in security, safety, or accountability.

NRC Response:

The change in compatibility does not have to result in an increase to security, safety, or accountability. The purpose of the compatibility is to ensure that there is a consistent national regulatory program across the Agreement States and NRC states. In some cases, it's not necessary for the NRC and the Agreement States to have identical regulations. In this case, the NRC has determined that these regulations do not involve the transboundary issues that would trigger concern about a consistent national program. The NRC has therefore determined that compatibility category C is acceptable. This compatibility designation will allow Agreement States to adopt more stringent regulations.

Comment: A number of commenters argued that less restrictive compatibility will result in severe transboundary effects, which could drive some companies out of business. Less restrictive compatibility will make it more difficult for small companies that work in multiple States to stay in business. Also, the administrative burden of complying with different rules in each state and having to apply for reciprocal recognition before entering a State could become ''an administrative nightmare.''

An Agreement State and an industry commenter expressed opposition to the change in compatibility. One State

expressed concerns similar to some industry commenters that the compatibility change to 10 CFR 31.5(a) could result in 36 different sets of requirements, which would ''make compliance extremely difficult for any company that does not confine its activities to NRC jurisdiction or a particular Agreement State.'' Further, this commenter is concerned that the change in compatibility to 10 CFR 31.6 could result in improper disposal of generally-licensed devices because Agreement States might start to impose reciprocity or licensing fees for out-of-State general licensees that want to do business in the Agreement State.

In 2000, as part of the general-license-rule amendments, the NRC evaluated the compatibility of these regulations and concluded that this rule should not be open to the type of broad interpretation that would be allowed by a compatibility C designation (65 FR 79184–79185; December 18, 2000). The justification for this conclusion was the transboundary implications of allowing States to impose more strict criteria on generally-licensed devices under their jurisdiction.

NRC Response:

The 2000 general-license-rule amendments, which then designated the requirements in 10 CFR 31.5 and 10 CFR 31.6 as compatibility category B, were based on the concern that essentially identical regulations were needed to ensure reciprocal recognition of licenses and licensing requirements among Agreement States and the NRC. The commenter indicated that individual State variations in the regulations do not add any increase in safety or security at any level and only make more complicated and costly the compliance process for the general licensees, distributors, and service providers. After evaluating the post-2000 general-license-rule amendments, the NRC has reassessed its position. Since 2000, Agreement States have taken a variety of actions that are not consistent with the rule, despite its designation as compatibility category B. As a result, different practices already exist in different Agreement States; however, the NRC has not observed any transboundary problems from these different practices that would indicate compatibility category B is necessary. Further, complexity and cost are not aspects of determining significant transboundary health and safety impacts under the Commission's 1997 Policy Statement for Adequacy and Compatibility (62 FR 46517). The NRC disagrees with the commenter and believes it is appropriate to change the compatibility category to C for 10 CFR 31.5 and 10 CFR 31.6. This action acknowledges the current practice of many Agreement States to continue the practices they have already implemented and take additional steps they deem appropriate based on local circumstances.

The NRC does, however, recognize that if many more States change their regulations, there could potentially be transboundary impacts. As directed by the Commission, the NRC plans to determine the degree to which the Agreement States modify their programs as a result of the change in compatibility category and to analyze any transboundary impacts to regulated entities, particularly those operating on a multistate basis. The NRC may take corrective actions, if any are needed (ADAMS Accession No. ML103360262).

Comment: Another commenter is concerned that changing the existing regulations to compatibility C could ''be a step backward'' and could result in arbitrary limits on generally-licensed devices that are not based on public health and safety.

NRC Response:

The NRC has a program in place, Integrated Materials Performance Evaluation Program (IMPEP), which allows the NRC to evaluate the status of an Agreement State's program. If the NRC determines that a program is deficient, they will work with the Agreement State to correct the deficiencies.

Comment: One commenter is concerned that the change in compatibility could limit the ability of service providers to provide timely repairs, which could affect production at plants that rely on generally-licensed devices (delays range from three to five days, depending on the State).

NRC Response:

The NRC shares the commenter's concerns and will be evaluating any regulatory changes that the Agreement States make in response to this change in compatibility. The NRC will gather data and may take action, if necessary (ADAMS Accession No. ML103360262).

Comment: One commenter asked that, if the change in compatibility is adopted, the NRC offer manufacturers and distributors the option to obtain a Master Materials License that would be valid for work in any NRC State or Agreement State.

NRC Response:

The NRC cannot issue a Master Materials License to non-federal licensees; the NRC only issues these licenses to Federal organizations.

Comment: One commenter argued that some Agreement States want the revised compatibility designation because they believe that they will be able to generate more fees through reciprocal recognition and inspection, without any clear benefit to health and safety.

NRC Response:

The NRC disagrees with the comment. The commenter did not provide any support for its statement and the NRC is not aware of any statements by Agreement State employees or representatives that would support this claim.

Comment: A number of Agreement States supported some or all of the compatibility changes. One State supported only the change to 10 CFR 31.5(c)(13)(i), but noted that due to recent issues with tritium exit signs, the NRC might want to revise the list of isotopes that require registration.

Other States noted that their regulations were more rigorous than the NRC's general-license requirements, and that this difference has not resulted in any transboundary issues. Further, these commenters believe that the revised compatibility would allow for better tracking of generally-licensed devices, and that the more strict requirements result in increased health and safety. Finally, these states argue that the change in compatibility will allow States with more rigorous requirements to leave those requirements in place.

Other Agreement States simply noted their agreement with the NRC's proposed compatibility change. Another State noted that allowing states to adopt more strict licensing requirements might allow the NRC to make a better informed decision about using IAEA Category 4 as the threshold for general licensees. The OAS even indicated it would not support the proposed rule without the change in compatibility.

NRC Response:

The NRC agrees with the commenters. The change in compatibility will allow the Agreement States to adopt regulations that are stricter than the NRC's regulations, while the regulatory floor established by the NRC will continue to ensure that there is reasonable assurance of public health and safety.

Comment: Some commenter's suggested that the NRC amend 10 CFR 31.5 to require specific licenses for portable gauges and leave the compatibility category as B, which they believed would address the concerns of many States because a number of these States do not allow portable gauges to be held under a general license.

NRC Response:

The Commission has decided not to adopt the proposed rule. Further, the NRC appreciates the commenter's

concern about the compatibility change. The NRC staff will monitor the compatibility changes to ensure that there aren't unforeseen transboundary problems. If the NRC discovers that the compatibility change has caused transboundary problems, such as reciprocity problems for licensees that operate in multiple jurisdictions, the staff will provide that information to the Commission as part of its 18-month report (ADAMS Accession No. ML103360262).

Comment: With regard to transboundary issues, several Agreement States indicated that there would be no significant transboundary issues in changing the compatibility category from B to C. Some of these commenters said that for many years, under the current general license regulatory framework, there have been no transboundary issues resulting from their State having more rigorous requirements than neighboring States for generally-licensed devices. One Agreement State indicated that it has never authorized out-of-State generally-licensed devices under reciprocal recognition in accordance with its State regulations.

One commenter stated that transboundary issues would only occur if some States choose to specifically license portable devices. The commenter stated that there would be a significant effect on the movement of these devices because licensees would need to pay fees and could be subject to reciprocity inspections. Other commenters, primarily manufacturers and service providers, believed that there would be significant transboundary issues in changing compatibility from category B to category C and supported the retention of category B.

NRC Response:

The NRC is unaware of any significant transboundary issues with the current system. Although the change in compatibility may require a change in licensing process for some companies (including any reciprocity changes and fee payments), these actions are not considered a significant transboundary issue since a similar nationwide system is already used for specific licensees. However, the NRC plans to assess the degree to which the Agreement States modify their programs as a result of the change in compatibility category and analyze any transboundary impacts to regulated entities, particularly those operating on a multistate basis. The NRC may take corrective actions if needed (ADAMS Accession No. ML103360262).

Comments on the proposal to prohibit specific licensees from possessing generally licensed devices.

Comment: The NRC did not receive any comments that supported the proposal to prohibit specific licensees from possessing a generally-licensed device. One commenter opposed this proposal because current regulations already include incentives for licensees to transfer their generally-licensed devices to a specific license. The transfer process takes significant time and effort by both the licensee and the regulator and can make the specific license cumbersome to maintain and enforce due to the large number of low-activity sealed sources. Several commenters believe that the proposal would be unfair to specific licensees because it is likely that companies that possess generally-licensed devices and do not have a specific license would continue operations under the general license, while companies with both generally-licensed devices and a specific license would be required to move their generally-licensed devices to their specific license. This change would arbitrarily impose more stringent regulations on specific licensees.

Comments from universities and research and development specific licensees argued that the proposal would place a substantial burden on them, requiring the revision of device authorizations by the responsible Radiation Safety Committee for a very large number of generally-licensed devices subject to 10 CFR 31.5. The commenters noted that placing these generally-licensed devices under the authority of a specific license would require the users of those devices to have a minimum amount of documented training and experience, and could require personnel radiation monitoring because some specific licensees require dosimetry for all users. The commenters also argued that the users of these generally-licensed devices are students and researchers who continuously change; and these new requirements would require additional training and documentation that is not necessary under the current general-license program. The commenters believe that there would be no reduction in the hazard to workers or students due to the transfer of these devices to the broad-scope specific license. Several Agreement States, research organizations, and large corporations supported the existing regulations, which allow licensees the flexibility to decide whether they want to add generally-licensed devices to their specific licenses. A number of universities stated that they would prefer to keep the numerous generally-licensed devices used in health care and research environments under the requirements of a general license.

NRC Response:

The NRC agrees with the commenters that the proposal to amend 10 CFR 31.5(b)(3) could cause confusion. The NRC intended to preserve the flexibility that licensees currently have to decide whether to transfer generally-licensed devices under the authority of a specific license for a site, but to specify that if generally-licensed devices were transferred to a specific license then the terms and conditions of the specific license would apply to the generally-licensed devices. The NRC agrees with the commenters and has decided not to adopt this proposed change to amend 10 CFR 31.5(b)(3). This amendment would be too burdensome on numerous licensees with little or no improvement in the accountability of the sources in those generally-licensed devices.

Withdrawal of the Proposed Rule

On December 2, 2010, the Commission disapproved publication of the final rule, which would have limited the quantity of byproduct material in a generally-licensed device to below one-tenth of IAEA's Category 3 threshold (ADAMS Accession No. ML103360262). The Commission that there is not a clear safety risk reduction or security enhancement that would justify the proposed rule and that the current safety and security requirements for these generally-licensed devices are adequate (ADAMS Accession No. ML103370094). Consequently, the NRC is withdrawing the proposed rule.

Agreement State Compatibility

On December 2, 2010, the Commission approved revising the compatibility designation of all 10 CFR 31.5 and 10 CFR 31.6 from B to C (ADAMS Accession No. ML103360262). The Commission recognized the desire on the part of the States to exercise greater control over the actions of their licensees and to enhance regulation for higher activity generally-licensed devices (ADAMS Accession No. ML103370094). The current compatibility designation for these sections is category B. This designation was primarily based on transboundary implications. Despite this designation, many Agreement States have implemented more strict regulation of generally-licensed devices. These regulations include registration with annual reporting requirements and periodic inspection, expanded registration of more types of generally-licensed devices, specific licensing of

certain generally-licensed devices, and specific licensing of all generally-licensed devices currently registered by the NRC.

The NRC believes that the change to compatibility category C will allow Agreement States the flexibility to enhance accountability; retain use of tools to track the location and movement of devices, manufacturers and service providers within the State limit; address issues specific to their jurisdictions; continue programs that have proven beneficial; and to adopt requirements based on their specific circumstances and needs. As directed by the Commission, the NRC staff will assess the degree to which the Agreement States modify their programs as a result of the change in compatibility category and analyze any transboundary impacts to regulated entities, particularly those operating on a multistate basis. If transbounday problems are identified, the staff will suggest any corrective actions that might be necessary (ADAMS Accession No. ML103360262). The Commission also plans to consider proposed updates to the Policy Statement on Adequacy and Compatibility of Agreement State Programs and associated guidance documents to include both safety and source security considerations in the determination process.

Closure of the Petition for Rulemaking

In its SRM, the Commission addressed all of the issues raised in the PRM: The Commission disapproved publication of the final rule and approved the change in compatibility for 10 CFR 31.5 and 10 CFR 31.6. The NRC is closing this PRM because all of the petitioners' requests have been resolved.

Dated at Rockville, Maryland, this 22nd day of December 2011.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Executive Director for Operations.

[FR Doc. 2012–1523 Filed 1–24–12; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 100908440–1615–01]

RIN 0648–BA24

Proposed Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Re-opening of public comment period.

SUMMARY: On October 21, 2011, NOAA published a proposed rule in the **Federal Register** to revise the regulations for the Fagatele Bay National Marine Sanctuary (76 FR 65566). This notice re-opens the public comment period stated in that proposed rule until March 9, 2012.

DATES: NOAA will accept public comments on the proposed rule published at 76 FR 65566 (October 21, 2011) through March 9, 2012.

ADDRESSES: The instructions for submitting comments are detailed in the proposed rule published on October 21, 2011 (76 FR 65566).

FOR FURTHER INFORMATION CONTACT: Gene Brighouse at (684) 633–7792.

Dated: January 17, 2012.

Daniel J. Basta,

Director, Office of National Marine Sanctuaries.

[FR Doc. 2012–1499 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–NK–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[CPSC Docket No. CPSC–2012–0005]

Products Containing Imidazolines Equivalent to 0.08 Milligrams or More

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is proposing a rule to require child-resistant (''CR'') packaging for any over-the-counter or prescription product containing the equivalent of 0.08 milligrams or more of an imidazoline, a class of drugs that includes tetrahydrozoline, naphazoline, oxymetazoline, and xylometazoline, in a single package. Imidazolines are a family of drugs that are vasoconstrictors indicated for nasal congestion and/or ophthalmic irritation. Products containing imidazolines can cause serious adverse reactions, such as central nervous system (''CNS'') depression, decreased heart rate, and depressed ventilation in children treated with these drugs or who accidentally ingest them. Based on the scientific data, the Commission preliminarily finds that availability of 0.08 milligrams or more of an imidazoline in a single package, by reason of its packaging, is such that special packaging is required to protect children under 5 years old from serious personal injury or illness due to handling, using, or ingesting such a substance. We are taking this action under the Poison Prevention Packaging Act of 1970 (''PPPA'').[1]

DATES: Written comments must be received by April 9, 2012.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0005, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 802, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice of proposed rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade

[1] The Commission voted 4–0 to publish this notice in the **Federal Register**. Commissioner Robert S. Adler issued a statement, which can be found at *http://www.cpsc.gov/pr/statements.html.*

secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Cheryl A. Osterhout Ph.D., Pharmacologist, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7290; *costerhout@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. What is the purpose of the proposed rule?

To protect children younger than 5 years old from serious personal injury following ingestion, the proposed rule would require CR packaging for any over-the-counter (''OTC'') or prescription product containing the equivalent of 0.08 milligrams or more of an imidazoline (including tetrahydrozoline, naphazoline, oxymetazoline, or xylometazoline) in a single package.

B. Why is CR packaging necessary for certain OTC or prescription products containing imidazolines?

Imidazolines are a family of drugs that are used as decongestants in eye drops and nasal products. Topical and nasal administration of imidazolines result in little absorption into the general circulation. Orally ingested, however, imidazolines are absorbed into the general circulation leading to systemic effects. Even though death from ingesting imidazolines is rare, ingestion can result in severe life-threatening consequences, such as central nervous system (''CNS'') depression and cardiovascular effects. Specific symptoms of CNS depression upon ingestion of imidazolines range from drowsiness to coma, with a concurrent depression of the respiratory system. Other observed CNS side effects include: headache, lightheadedness, dizziness, tremor, insomnia, nervousness, restlessness, giddiness, psychological disturbances, prolonged psychosis, and weakness. Imidazolines have led to CNS depression and insomnia in different individuals. Prominent cardiovascular effects in response to overdose include low blood pressure and slowed heart rate. The medical literature and evidence from collected samples demonstrate that despite the danger of ingesting imidazolines, imidazoline products are not manufactured in CR packaging.

C. What statutory authority does CPSC have to regulate child resistant packaging?

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, authorizes us to establish standards for the ''special packaging'' of any household substance if: (1) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance, and (2) the special packaging is technically feasible, practicable, and appropriate for such substance.

Special packaging, also referred to as ''child-resistant (CR) packaging,'' is: (1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time, and (2) not difficult for ''normal adults'' to use properly. 15 U.S.C. 1471(4). Household substances for which we may require CR packaging include (among other categories) foods, drugs, or cosmetics, as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). We have performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: ''This package for households without young children.'' 15 U.S.C. 1473(a), 16 CFR 1700.5.

II. Toxicity of Imidazolines

Tab A of the CPSC staff's briefing package, available at *http://www.cpsc.gov/library/foia/foia12/brief/imidazolines.pdf* contains the Directorate for Health Sciences' toxicity review for imidazolines, referred to hereinafter as ''Tab A: Staff Briefing Package.''

A. What medical conditions are imidazolines used to treat?

Imidazolines are used as topical decongestants because they produce vasoconstriction when administered to the eye or nasal mucosa. In the eye, the imidazolines relieve redness due to minor eye irritations by causing vasoconstriction of the blood vessels on the surface of the eye and eyelid (Facts and Comparisons, Ophthalmic Decongestants, Pharmacology, 2011). The onset of vasoconstriction after topical application is within minutes. As nasal decongestants, imidazolines temporarily relieve nasal congestion or stuffy nose due to the common cold, hay fever, or other upper respiratory allergies (Facts and Comparisons, Nasal Decongestants, Pharmacology 2011). The imidazolines cause vasoconstriction in mucous membranes, which decreases blood flow and leads to shrinking of swollen nasal mucosa and increased drainage of the sinuses.

B. What health risks are there for people who overdose on or orally ingest imidazolines?

The therapeutically effective dose of imidazolines occurs within a narrow dose range with toxic effects occurring at doses close to, or at, therapeutic levels. CNS depression (ranging from drowsiness to deep sedation) may occur after normal doses in infants. Overdoses (doses not specified) of these medications have caused initial spikes of high blood pressure leading to slowed heart rate, drowsiness, and rebound low blood pressure in adults. A shock-like syndrome with abnormally low blood pressure and slowed heart rate may also occur. Warnings on tetrahydrozoline- and naphazoline-containing OTC drugs state that use may cause CNS depression leading to coma in pediatric patients. Xylometazoline and oxymetazoline symptoms of overdose include: extreme tiredness, sweating, dizziness, a slowed heartbeat and coma.

When the drug is absorbed, it can act systemically within the body. Topical administration of imidazolines to the eye produces local effects to the blood vessels of the eye, but little is absorbed into the general circulation. (For purposes of this document, we interpret ''absorption'' as the passage of a drug from its site of administration into the blood plasma.)

Nasal administration of imidazolines causes an intense degree of vasoconstriction, and therefore, negligible absorption of the drug into the general circulation (POISINDEX®, 2011). However, with oral ingestion, imidazolines are absorbed into the general circulation, leading to systemic effects. These drugs are absorbed quickly, and symptoms can occur in as little as one hour, peaking at 8 hours, and resolving after 12–36 hours. Even though the symptoms resolve in a relatively short amount of time, ingestion of imidazolines can result in

severe life-threatening consequences, including decreased breathing, decreased heart rate, and loss of consciousness, which require hospitalization to ensure recovery. Table 3, in section III.B of this preamble, summarizes relevant cases of imidazoline ingestion.

U.S. Food and Drug Administration (''FDA'') regulations pertaining to ''Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use,'' at 21 CFR 341.80(c)(2)(iv), require the product label for products containing naphazoline hydrochloride at a concentration of 0.05 percent to state: ''Do not use this product in children under 12 years of age because it may cause sedation if swallowed.'' Specific symptoms of CNS depression upon ingestion of imidazolines range from drowsiness to coma, with a concurrent depression of the respiratory system. Other observed CNS side effects include: headache, lightheadedness, dizziness, tremor, insomnia, nervousness, restlessness, giddiness, psychological disturbances, prolonged psychosis, and weakness. Imidazolines have led to CNS depression and insomnia in different individuals. The insomnia, seen in a few cases, may be an unpredictable, idiosyncratic reaction (*i.e.,* a drug effect that occurs in a small number of people due to age, genetics, or disease state).

Prominent cardiovascular effects in response to overdose include rebound low blood pressure and slowed heart rate. Other reported cardiovascular adverse events include: palpitation (rapid heart rate), cardiac arrhythmia (variation from the normal rhythm of the heart), coronary occlusion (partial or complete obstruction of blood flow in a coronary artery), pulmonary embolism (lodging of mass in a lung), subarachnoid hemorrhage (bleeding between brain and surrounding tissues), myocardial infarction (interruption of blood supply to part of the heart, causing heart cells to die), stroke, and death associated with cardiac reactions in adults. Other systemic side effects can include: blanching (temporary whitening of the skin), sweating, nausea, gastric irritation, weakness, and high blood sugar (POISINDEX®, 2011).

C. What treatment options are available for imidazoline overexposure?

No specific treatment for imidazoline overexposure exists. Naloxone (an opioid blocker) has been used without consistent success. Gastric lavage is not recommended more than 1 hour after ingestion because the imidazolines are absorbed quickly after ingestion, leading to CNS depression and a greater risk of aspiration into the lungs. Activated charcoal may be used up to 1 hour after ingestion; but again, due to the CNS depression, there is a greater risk of aspiration into the lungs. Therefore, treatment of the clinical effects from imidazolines is supportive based on symptoms. For example, mechanical respiration would be administered to those with severe respiratory depression.

III. Ingestion and Injury Data

A. What data on imidazoline poisonings is contained in the National Electronic Injury Surveillance System (''NEISS'')?

The CPSC's Directorate for Health Sciences maintains the Children and Poisoning (''CAP'') system, a subset of NEISS records containing additional information obtained through NEISS involving children under 5 years old (Boja, 2001). NEISS is a statistically valid injury surveillance and follow-back database that we maintain of consumer product-related injuries occurring in the United States. Injury data are gathered from the emergency departments (ED) of approximately 100 hospitals selected as a probability sample of all 5,000+ U.S. hospitals with emergency departments. The system's foundation rests on emergency department surveillance data, but the system also has the flexibility to gather additional data at either the surveillance or the investigation level. Surveillance data enable us to make timely national estimates of the number of injuries associated with (but not necessarily caused by) specific consumer products. This data also provides evidence of the need for further study of particular products. Subsequent follow-back studies yield important clues to the cause and likely prevention of injuries and deaths. For additional information on NEISS, see the CPSC's Web site at *http://www.cpsc.gov/cpscpub/pubs/3002.html.*

CAP includes data on each pediatric poisoning, chemical burn, or ingestion case reported from a NEISS hospital, as well as data on some ingestions that could lead to poisoning. Our review of data obtained from CAP is summarized in Tab B of the Staff's Briefing Package, hereinafter Tab B: Staff Briefing Package.

We searched the CAP database for incidents between January 1997 and December 2009, involving household products that typically contain imidazolines. During that time, there were an estimated 5,675 emergency room-treated injuries associated with household products containing imidazolines involving children under 5 years old. Table 1 below shows the injury estimates for each of the product groups involved in these incidents. Four-fifths of the estimated injuries (81 percent) involved eye drops.

TABLE 1—ESTIMATED IMIDAZOLINE PRODUCT-RELATED INJURIES TO CHILDREN UNDER 5 YEARS OLD, 1997–2009, BY PRODUCT GROUP

Product	Estimated injuries	Coefficient of variation	Sample size	95% confidence interval
Eye drops	4,571	0.19	138	2,831–6,311
Nose Sprays[2]	1,104	0.31	34	426–1,782
Total	5,675	0.18	172	3,666–7,684

Source: U.S. Consumer Product Safety Commission National Electronic Injury Surveillance System and Children and Poisoning System, 2011.

The following table of NEISS In-Depth Investigations qualitatively illustrates that children were able to obtain access to imidazoline packages.

[2] The estimate for this category is highly variable due to small sample size and high coefficient of variation. These numbers should be interpreted with caution.

TABLE 2—SELECTED IN-DEPTH INVESTIGATION NEISS REPORTS SHOWING CHILD ACCESS TO IMIDAZOLINE PRODUCTS

NEISS Case #	Age	Imidazoline product	How accessed (from case narrative)
991018HEP9007	13-month-old	Eye drops	Eye drops were on counter. Bottle may have been partially open. Child found with open bottle of eye drops with cap in her mouth.
050525HEP9006	15-month-old	Eye drops	Parents saw child playing with bottle of eye drops. She had gotten cap off. Parents noted cap was broken on examination.
080714HEP9016	15-month-old	Eye drops	Child found playing with empty bottle of eye drops.
980430HEP9006	18-month-old	Eye drops	Older sibling opened bottle and gave to victim.
050907HEP9001	20-month-old	Eye drops	Eye drops on low dresser, child was able to reach with her hands. Parents say child can open "anything."
011023HEP9001	23-month-old	Eye drops	Child pulled eye drops off counter and removed lid.
000531HEP9005	2-year-old	Nasal Spray	Child came out of bathroom with empty bottle. Bottle had not been put away properly and was within victim's reach.
000601HEP9015	2-year-old	Eye drops	Mother left bottle on sink in bathroom after using it. Victim came out of bathroom sucking on bottle. Not clear if child or mother took cap off.
011023HEP9003	2-year-old	Eye drops	Used chair to get to medicine cabinet in kitchen. Took out eye drops and opened them. Mother found child on kitchen counter with open eye drops in hand.
020130HEP9003	2-year-old	Eye drops	Took eye drops out of mother's purse and opened tightly closed cap.
970306HEP9001	2-year-old	Eye drops	Child found in bedroom with open bottle of eye drops. She opened bottle with her teeth.
990301HEP9015	2-year-old	Eye drops	Child took bottle of eye drops off of dresser and unscrewed top.
990416HEP9008	2-year-old	Nasal Spray	Child was in bedroom watching TV on bed. Took nasal spray off of nightstand next to bed. Open, empty bottle found on bed.
990419HEP9022	2-year-old	Eye drops	Bottle left on counter in bathroom was found empty in child's hand.
991018HEP9012	2-year-old	Eye drops	Child found holding bottle of eye drops; cap had been removed and was in his mouth.
020321HEP9004	3-year-old	Eye drops	Child found in bedroom with opened bottle of eye drops.
091009HEP9010	4-year-old	Eye drops	Bottle left on counter. Child was found with open bottle.

B. What data on imidazoline poisonings are contained in the FDA's Adverse Event Reporting System ("AERS")?

The AERS is a database of voluntary reports from health care professionals and consumers, and mandatory reports from manufacturers. AERS is maintained by the FDA and contains reports of adverse events and medication errors for all FDA-approved drugs and therapeutic biologic products. We asked the FDA for all AERS reports mentioning the imidazolines tetrahydrozoline, oxymetazoline, xylometazoline, or naphazoline. FDA provided 1,041 reports for 772 distinct cases involving both children and adults occurring between October 1968 and August 2010, for us to review. We checked for cases related to imidazolines, excluded the cases with concomitant drugs, and determined that 67 cases (with 115 total reports) were in scope for consideration in this rulemaking.

Reports through the AERS system show a wide variety of adverse events across all ages associated with the use of imidazolines. The top three system/organ classes with reported adverse events were psychiatric disorders (52 reports); nervous system disorders (47 reports); and respiratory, thoracic, and mediastinal disorders (38 reports). Sixty-two out of 67 in-scope cases (93 percent) reported an adverse event in one of the top three system/organ classes. (Reports can include more than one adverse event, so individual reports may be recorded in more than one system/organ class.) Our review of these cases is contained in Tab B: Staff Briefing Package.

C. What other information is available on the frequency, volume, and severity of ingestion of imidazolines?

The volumes of imidazoline ingestions in children (under the age of 5) that were reported from two sources, the FDA's AERS database ("MedWatch reports") and the medical literature, ranged from several drops to a high of 30 mL (2 tablespoons). The volume ingested was unknown in several imidazoline cases. Very serious adverse effects occurred in response to small oral doses of imidazolines; these are highlighted in Table 3 below, from highest to lowest dose in milligrams.

In MedWatch reports of adverse events occurring in response to ingestion of imidazolines, 43 cases occurred in children under 5 years old. Tetrahydrozoline ingestions constituted the majority of the cases (88 percent). There were no reported deaths related to imidazoline ingestion. *See* Tab A: Staff Briefing Package, Appendix A, for a complete list of cases.

The most recent imidazoline ingestion case cites the lowest dose of ingestion of which we are aware that caused severe adverse symptoms in a child. The case involved a 25-day-old infant who suffered apnea after being treated with tetrahydrozoline nasal drops (0.05 percent). The mother inadvertently administered the nasal drops by the oral route three times per day with 0.5 ml/day (0.25 mg). The immature kidney

and liver function of the newborn caused the drugs to clear the newborn's system slower than in an adult. CPSC staff reviewing this case report considered the three doses of nasal drops to be additive and calculated the total dose for this case to be 0.75 mg. After the second dose, the child was not feeding well and had low muscle tone. Two hours after the second dose, he developed apnea. After the third dose was administered, the child was brought to the hospital and admitted with a respiratory rate of four breaths per minute and a slowed heart rate. The infant was treated with naloxone, resolving the apnea and bradycardia. After two days, the child was in good condition and was discharged. After follow-up 10 days later, the child was in normal condition (Katar *et al.* 2010).

Our review of the ingestion data is contained in Tab A: Staff Briefing Package.

TABLE 3—RELEVANT CASES OF IMIDAZOLINE INGESTION

Estimated dose	Onset/symptoms	Age	Result	Reference
2.8–5.6 mg oxymetazoline.	Within 5 minutes. Child passed out and stopped breathing. Given CPR and taken to ER.	18 mos	Given fluids and admitted to ICU. Aroused from coma 8–10 hours later. Released later that day. Having headaches 3–4 times daily.	FDA MedWatch 439578450001 6/2004.
3–4 mg naphazoline.	"Soon" became "quite drowsy" for several hours.	3 yrs	Several hours	Waring 1945.
3–4 mg naphazoline.	One hour after ingestion. Became hypothermic, lethargic, irritable, pale, irregular gasping respirations, hypertension, bradycardia. Followed by unconsciousness and imperceptible respirations.	22 mos	Child warmed and treated with caffeine and oxygen. Symptoms resolved after 15 hrs.	Hainsworth 1948.
2–2.5 mg tetrahydrozoline.	90 minutes Lethargic, decreased heart rate, decreased blood pressure.	17 mos	Pediatric intensive care unit Recovered 24 hrs.	Jensen *et al.* 1989.
Up to 2 mg tetrahydrozoline.	Sharp increase and then decrease of heart rate.	22 mos	Pediatric intensive care unit	FDA540321.
1.25–2.5 mg tetrahydrozoline.	Decreased heart rate Lethargic, difficult to arouse, depressed respiration.	16 mos	Admitted to hospital overnight	FDA671307.
1.25–2.5 mg tetrahydrozoline.	2 hrs. Ataxic, pale, drowsy, decreased heart rate, decreased respiration.	1 yr	Admitted to hospital Recovered 24 hrs.	Mindlin 1966.
1.3 mg tetrahydrozoline.	30 min. Lethargic, difficulty breathing, vomiting, loss of consciousness.	2 yrs	Admitted to hospital, treated with charcoal. Released from hospital same day, symptoms resolved.	FDA 43222810001.
1–1.5 mg tetrahydrozoline.	2–3 hrs Lethargy, decreased blood pressure, decreased respiration.	2 yrs	Pediatric intensive care unit Mechanical respiration for 18 hrs Recovered 48 hrs.	Tobias 1996.
0.25 mg x 3 or 0.75* tetrahydrozoline.	2 hrs. Apnea, decreased respirations, slowed heart rate.	25 days	Admitted to hospital Naloxone, Continuous positive airway pressure, oxygen Recovered 2 days.	Katar *et al.* 2010.

* Due to diminished clearance of drugs by the liver and kidney of the newborn, the three doses are considered additive.

IV. Level for Regulation

Absorption of imidazolines after oral ingestion can lead to unpredictable and profound CNS depression, including depressed respiration and cardiovascular events. It has been shown that children under 5 years old are accidentally ingesting imidazoline-containing products. The first cases of imidazoline toxicity in children after accidental ingestion occurred in the mid-1940s, shortly after the release of naphazoline into the market; and the incidents have continued to occur for more than 50 years (Waring 1945, Greenblat 1947, Hainsworth 1948, Meeker 1948, Bucaretchi *et al.,* 2003). Symptoms of imidazoline toxicity include CNS depression, ranging from drowsiness to coma, bradycardia, and hypoventilation. Even though death from imidazoline exposure is rare, many of these events result in serious life-threatening consequences requiring hospitalization and intensive care monitoring for recovery. *See* Table 3, section III.C of this preamble, for a summary of relevant cases of imidazoline ingestion.

Mindlin (1966) reported a case in which a 1-year-old girl ingested between ½ to 1 teaspoon (2.5–5 mL) of tetrahydrozoline eye drops and suffered CNS depression with slowed respiration and decreased heart rate. Based on this ingestion, recent publications define 2.5 mL tetrahydrozoline (0.05 percent, 1.25 mg) as the dose at which serious toxicity from imidazoline exposure can occur after ingestion (Holmes and Berman, 1999; Eddy and Howell 2000). In the preamble to the proposed FDA rule for OTC nasal decongestants, it was reported that the minimum oral dose of oxymetazoline in an adult causing measurable cardiovascular effects (on blood pressure and heart rate) was 1.8 mg of oxymetazoline (41 FR 38312, 38398 (September 9, 1976)). This minimum dose may be lower for children because they appear to be more sensitive to imidazoline effects than adults (Brainerd and Olmstead, 1956). Cases indicate that ingestion of as little as 0.75 mg of imidazolines can result in serious illness in children, requiring supportive therapy (Katar *et al.,* 2010; Summary see Table 3). The most recent case of imidazoline ingestion is reviewed above in section III.C of this preamble. It involved a 25-day-old infant who suffered apnea after being treated with tetrahydrozoline nasal drops (0.05 percent). CPSC staff reviewing this case report calculated the total dose for this case to be 0.75 mg, which is the lowest dose of ingestion of which we are aware that caused severe adverse symptoms in a child.

Because serious effects on the heart and breathing rates occur with the ingestion of as little as 0.75 mg of tetrahydrozoline, we consider this the lowest observed adverse effect level (''LOAEL''). All of the imidazolines cause potent central and peripheral sympathetic effects, but tetrahydrozoline has the highest potency for CNS sedative/depressive effects and the lowest potency for cardiac effects. Oxymetazoline and naphazoline are the most potent imidazolines for peripheral cardiac effects and have an 8–10 times lower maximum daily dose than tetrahydrozoline (0.4 mg, 0.3 mg and 3.2 mg, respectively). Xylometazoline and oxymetazoline have a longer duration of action than tetrahydrozoline (12 hrs, 10 hrs, and 4–6 hrs, respectively).

Applying a safety factor of 10 to the LOAEL to derive a recommended regulated level of 0.08 mg for all imidazolines is appropriate in order to protect children from serious health effects following ingestion of this family of drugs. The level of 0.08 mg would require all known imidazolines (see Tables 1 and 2) currently on the market to be placed in CR packaging. (The assumptions underlying the use of safety factors are that by using these factors, both the public health and sensitive populations are protected. Further assumptions hold that humans are somewhere between 10 and 1,000 times more sensitive to some toxic agents than animals, and adults are less sensitive than children. Hence, a safety assessment can be conducted using the proper toxicological evaluation with different populations to establish the NOEL (no observable effect level) or its equivalent. We used a tenfold safety factor to divide the LOEL to reach a NOEL level.

V. Preliminary Findings Related to Child Resistant Packaging for Imidazolines

A. Do imidazolines in non-CR packaging pose a hazard to children?

As noted above in sections II.B and III of this document, the toxicity data concerning children's oral ingestion of imidazolines demonstrate that they can cause serious illness and injury to children. Moreover, imidazolines are available to children in common household products, such as eye drops and nasal sprays. Products containing imidazolines currently do not use CR packaging. The Commission concludes preliminarily that a regulation is needed to ensure that products subject to the regulation will be placed in CR packaging by any current, as well as new manufacturers.

B. Is it technically feasible, practicable, and appropriate for the Commission to require special packaging for certain imidazoline-containing products?

Special packaging under the PPPA is designed to protect children from serious personal injury or illness. In addition to finding that special packaging is necessary to protect children, we must find that special packaging is technically feasible, practicable, and appropriate for these products (15 U.S.C. 1472(a)(2)). For special packaging to be technically feasible, the technology must be available to produce packaging that conforms to established standards. A package is practicable if the special packaging is adaptable to modern mass production and assembly line techniques. Finally, packaging is appropriate if the packaging will protect the integrity of the substance adequately and will not interfere with its intended storage or use. All three of these conditions must be met before we can require special packaging for a product.

The definition of ''packaging'' is ''the immediate package or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household.'' The PPPA defines ''special packaging'' as packaging that is designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of substance within a reasonable time and not difficult for normal adults to use properly. Section 2(4) of the PPPA. The child-resistance and adult-use-effectiveness of special packaging are measured by performance testing packaging with children and senior adults, respectively.

We evaluated packaging representative of OTC products that contain imidazolines. The specimens represent products from all four imidazoline families: naphazoline hydrochloride (HCL), oxymetazoline HCL, tetrahydrozoline HCL, xylometazoline, and a naphazoline HCL combination product. None of the samples used special packaging. The eye drops were packaged in squeeze-to-dispense plastic dropper bottles. The nasal spray was packaged in a plastic bottle with an attached metered pump sprayer, and the nasal drops were packaged in a squeeze-to-dispense plastic dropper bottle. *See* Tab C: Staff Briefing Package, for a more detailed discussion of the products.

With package size and/or type changes, ASTM Type IA, ASTM Type ID, and a CR metered pump sprayer design, are available to the market to replace the non-CR continuously threaded (NCRCT) and the non-CR (NCR) metered spray pump packages. Product packaging assembly line techniques used for the NCR packages can be adapted for some of the CR packages already in the marketplace. Other product manufacturers may use packages that could require changes in assembly- and filling-line techniques. New package sizes also may need to be designed. These new packages would require new tools to be produced. It could take up to 1 year from initiating tool design to final production of a new package, depending upon the complexity of the package.

Based on the foregoing, we preliminarily conclude that available data support the findings that CR packaging for household products containing imidazolines is technically feasible, practicable, and appropriate.

C. Has the Commission made any other findings related to special packaging?

In establishing a special packaging standard under the PPPA, we must consider the following:

1. Reasonableness of the standard;
2. Available scientific, medical, and engineering data concerning special packaging and childhood accidental ingestions, illness, and injury caused by household substances;
3. Manufacturing practices of industries affected by the PPPA; and
4. Nature and use of the household substance.

15 U.S.C. 1472(b). We have considered these factors with respect to the various determinations made in this notice, and preliminarily find no reason to conclude that the rule is unreasonable or otherwise inappropriate.

VI. Description of the Proposed Rule

The proposed rule would add a new paragraph 33 to 16 CFR 1700.14(a), which contains a list of substances requiring special packaging. Pursuant to § 1700.14(a), all substances listed in § 1700.14 must meet the requirements for special packaging contained in § 1700.20(a) (on testing procedures for special packaging). Proposed § 1700.14(a)(33) would provide that any over-the-counter or prescription product containing the equivalent of 0.08 milligrams or more of an imidazoline (tetrahydrozoline, naphazoline, oxymetazoline, or xylometazoline) in a single package, must be packaged in accordance with the provisions of § 1700.15(a), (b), and (c). Section 1700.15(a) contains general requirements for special packaging,

such as the special packaging must continue to function with the effectiveness specifications set forth in § 1700.15(b). Section 1700.15(b), on effectiveness specifications, provides criteria that special packaging tested pursuant to § 1700.20 must meet. Finally, § 1700.15(c) provides that special packaging subject to this paragraph (c) may not be reused.

VII. Request for Comments

We invite interested persons to submit comments on any aspect of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice.

VIII. Environmental Impact

Generally, our regulations are considered to have little or no potential for affecting the human environment, and environmental assessments and impact statements are not usually required. *See* 16 CFR 1021.5(a). More specifically, requiring CR packaging for certain imidazoline-containing products is not expected to have an adverse impact on the environment. Accordingly, the rule falls within the categorical exclusion in 16 CFR 1021.5(b)(2) for product certification rules and an environmental assessment or environmental impact statement is not required.

IX. Executive Order 12988 (Preemption)

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. Section 7 of the PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A state or local standard may be excepted from this preemptive effect if: (1) the state or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the state or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a state or local government, may establish and continue in effect a nonidentical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, state or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the proposed rule regarding CR packaging for household products containing an imidazoline above the regulated level would preempt non-identical state or local special packaging standards for such imidazoline containing products.

X. Regulatory Flexibility Act (Economic Analysis)

The Regulatory Flexibility Act (''RFA'') generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. Section 603 of the RFA calls for agencies to prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives. 5 U.S.C. 603. Section 605(b) of the RFA, however, states that this requirement does not apply if the head of the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities and the agency provides an explanation for that conclusion.

Nasal and ophthalmic products are classified within the NAICS 325412 *Pharmaceutical Preparation Manufacturing* industry. According to the U.S. Small Business Administration's Office of Advocacy, a firm classified within NAICS 325412 is considered a small business if the firm has fewer than 750 employees. Based on such classification, out of the approximately 45 firms that manufacture imidazoline-based eye drops and nasal sprays, approximately 20 firms are defined as ''small businesses.'' There may be more manufacturers, in particular firms that manufacture under generic labels, that were not identified but that may be small businesses.

Preliminary analysis shows the proposed rule would, if finalized, not have a significant impact on a substantial number of small businesses. First, the incremental costs of CR packaging for manufacturers are low, estimated at 1.5 cents per unit for imidazoline products. Manufacturers are likely to be able to pass on at least some of these costs to consumers. Second, most manufacturers of OTC drug products have diverse product lines that include other products that would not be covered by this possible regulation. Therefore, the products that would be affected by this proposed regulation may represent a small proportion of any one manufacturer's production. Finally, the requirements would apply only to products packaged after the effective date of the requirements. Therefore, businesses would have time to use up existing inventories of product and packaging. Based on the foregoing, we conclude preliminarily that the proposed rule regarding CR packaging for certain imidazoline products would not have a significant economic impact on a substantial number of small entities.

XI. Trade Secret or Proprietary Information

Any person responding to this notice who believes that any information submitted is trade secret or proprietary should specifically identify the exact portions of the document claimed to be confidential. We will receive and handle such information confidentially and in accordance with section 6(a) of the Consumer Product Safety Act (''CPSA''), 15 U.S.C. 2055(a). Such information will not be placed in a public file and will not be made available to the public simply upon request. If we receive a request for disclosure of the information or conclude that its disclosure is necessary to discharge our responsibilities, we will inform the person who submitted the information and provide that person an opportunity to present additional information and views concerning the confidential nature of the information. 16 CFR 1015.18(b).

Thereafter, we will make a determination of whether the information is trade secret or proprietary information that cannot be released. The determination will be made in accordance with applicable provisions of the CPSA; the Freedom of Information Act (''FOIA''), 5 U.S.C. 552b; 18 U.S.C 1905; our procedural regulations at 16 CFR part 1015 governing protection and disclosure of information under provisions of FOIA; and relevant judicial interpretations. If we conclude that any part of information that has been submitted with a claim that the information is a trade secret or proprietary is disclosable, we will notify the person submitting the material in writing and provide at least 10 calendar days from the receipt of the letter for that person to seek judicial relief. 15 U.S.C. 2055(a)(5) and (6); 16 CFR 1015.19(b).

XII. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than 1 year from the date a final

regulation is issued, except that, for good cause, we may establish an earlier effective date if we determine an earlier date to be in the public interest. 15 U.S.C. 1471n. Because it could take up to 1 year to produce a new package for some companies, we intend that any final rule become effective 1 year after the publication of a final rule in the **Federal Register**.

XIII. References

Please see all citing references in the staff's briefing package, available at *http://www.cpsc.gov/library/foia/foia12/brief/imidazolines.pdf.*

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission proposes to amend 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231. 15 U.S.C. 2079(a).

2. Section 1700.14 is amended to add paragraph (a)(33) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(33) *Imidazolines.* Any over-the-counter or prescription product containing the equivalent of 0.08 milligrams or more of an imidazoline (tetrahydrozoline, naphazoline, oxymetazoline, or xylometazoline) in a single package, must be packaged in accordance with the provisions of § 1700.15(a), (b), and (c).

Dated: January 20, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–1446 Filed 1–24–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 20, 25, and 510

[Docket No. FDA–2001–N–0075 (formerly Docket No. 2001N–0284)]

RIN 0910–AF78

Import Tolerances for Residues of Unapproved New Animal Drugs in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish procedures by which a person may request that the Agency establish or amend tolerances for unapproved new animal drugs where edible portions of animals imported into the United States may contain residues of such drugs (import tolerances), as well as procedures to revoke an existing import tolerance. Such import tolerances provide a basis for legally marketing food of animal origin that is imported into the United States and contains residues of unapproved new animal drugs.

DATES: Submit either electronic or written comments on the proposed rule by April 24, 2012. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by February 24, 2012, (see the ''Paperwork Reduction Act of 1995'' section of this document).

ADDRESSES: You may submit comments, identified by Docket No. FDA–2001–N–0075 and RIN 0910–AF78, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the ''Paperwork Reduction Act of 1995'' section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* (301) 827–6870.
- *Mail/Hand delivery/Courier (for paperor CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket No. FDA–2001–N–0075, and RIN 0910–AF78 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Scott Melton, Center for Veterinary Medicine (HFV–232), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–8666, email: *scott.melton@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative and Rulemaking Background

The President signed into law the Animal Drug Availability Act of 1996 (ADAA) on October 9, 1996. Section 4 of the ADAA amended section 512(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(a)) by adding the following: ''(6) For purposes of section 402(a)(2)(D) (now section 402(a)(2)(C)(ii) as a result of the Food Quality Protection Act), a use or intended use of a new animal drug shall not be deemed unsafe under this section if the Secretary establishes a tolerance for such drug (import tolerance) and any edible portion of any animal imported into the United States does not contain residues exceeding such tolerance. In establishing such tolerance, the Secretary shall rely on data sufficient to demonstrate that a proposed tolerance is safe based on similar food safety criteria used by the Secretary to establish tolerances for applications for new animal drugs filed under subsection (b)(1). The Secretary may consider and rely on data submitted by the drug manufacturer, including data submitted to appropriate regulatory authorities in any country where the new animal drug is lawfully used or data available from a relevant international organization, to the extent such data are not inconsistent with the criteria used by the Secretary

to establish a tolerance for applications for new animal drugs filed under subsection (b)(1). For purposes of this paragraph, 'relevant international organization' means the Codex Alimentarius Commission or other international organization deemed appropriate by the Secretary. The Secretary may, under procedures specified by regulation, revoke a tolerance established under this paragraph if information demonstrates that the use of the new animal drug under actual use conditions results in food being imported into the United States with residues exceeding the tolerance or if scientific evidence shows the tolerance to be unsafe.'' [1]

A residue is any compound present in edible tissues that results from the use of a drug, and includes the drug, its metabolites, and any other substance formed in or on food because of the drug's use (title 21 of the *Code of Federal Regulations* § 530.3(f) (21 CFR 530.3(f))).

Any amount of residue in imported, animal-derived food from a new animal drug not approved or conditionally approved in the United States and for which no import tolerance exists, even a level of residue considered safe by a country where the new animal drug is lawfully used, would cause the imported, animal-derived food to be adulterated under section 402(a)(2)(C)(ii) of the FD&C Act (21 U.S.C. 342(a)(2)(C)(ii)) because the drug would be deemed unsafe under section 512 of the FD&C Act. Such food could be denied entry into the United States under section 801(a)(3) of the FD&C Act (21 U.S.C. 381(a)(3)).

Thus, it is unlawful to import animal-derived food that bears or contains residues of a new animal drug that is not approved or conditionally approved in the United States, unless a tolerance has been established for the residues of that new animal drug in imported, animal-derived food (import tolerance) and the residue of the new animal drug in the imported, animal-derived food does not exceed the import tolerance. It should be noted that the establishment of an import tolerance for an unapproved new animal drug does not provide for the lawful use of the drug in the United States, and such use would cause the drug to be deemed unsafe within the meaning of section 512 of the FD&C Act and adulterated within the meaning of section 501(a)(5) of the FD&C Act (21 U.S.C. 351(a)(5)).

This import tolerance proposed regulation, if finalized, will be FDA's last action to fully implement the ADAA. This proposed regulation describes procedures by which a person could request that the Agency establish or amend an import tolerance for a new animal drug not approved or conditionally approved for use in the United States. This proposed regulation would also establish procedures to revoke an existing import tolerance as provided in section 512(a)(6) of the FD&C Act. This regulation does not preclude the Commissioner from establishing or amending an import tolerance on his or her own initiative under § 10.25(b) (21 CFR 10.25(b)).

Public and Advisory Committee Input Prior To Rulemaking

In the **Federal Register** of August 10, 2001 (66 FR 42167), the Agency published an advance notice of proposed rulemaking (ANPRM) to discuss issues pertaining to the development of regulations regarding import tolerances. FDA solicited comments on four specific issues and for any other issues relating to import tolerances. In January 2002, FDA's Center for Veterinary Medicine (CVM, the Center) held a public meeting with the Veterinary Medicine Advisory Committee (VMAC) to discuss import tolerances. The Center presented the four specific issues that were included in the previously published ANPRM. These questions, as well as a summary of VMAC's responses and public comments to the ANPRM, follow:

Issue 1: Approaches the Agency Could Use To Find a Safe Import Tolerance

There are different approaches the Agency could use to find a safe import tolerance. It could look at toxicity and residue data and build in a conservative safety factor. Alternatively, it could also review conditions of use such as good agricultural practices, route of administration, and dose, which may result in a different safety factor or factors. Additionally, it could consider manufacturing information such as that required for a domestic application, which also could result in a different safety factor or factors. Which approach is preferable?

The consensus of VMAC was that import tolerances should be based on a food safety approach similar to that currently employed by FDA to establish tolerances for new animal drugs for which applications are filed under section 512(b)(1) of the FD&C Act. The committee noted that there should be some assurance that drugs covered by import tolerances are manufactured under good manufacturing practices (GMP)-like conditions.

Comments received from the public on this issue were similar to the comments that were received from VMAC.

Issue 2: Analytical Techniques

Only the drug marker residue for the drug substance, not the product formulation or the sponsor of the import tolerance, can be determined by the type of analytical method that is typically used to assay imports. Are there analytical techniques or other approaches that would allow the Agency to determine whether a residue is due to use of the drug product for which the tolerance is approved?

The consensus of VMAC was that they were not aware of a practical methodology to accomplish this task.

Issue 3: Agency Disclosure to the Public

- Should the Agency disclose to the public that it is considering an import tolerance for a new animal drug?
- If so, when (e.g., upon request, upon filing)?
- How should the Agency do so (e.g., **Federal Register**, Internet)?
- How much detail should the Agency provide, keeping in mind that it cannot disclose trade secrets or confidential commercial information?

The consensus of VMAC was that FDA should do an initial review of each request to establish or amend an import tolerance to determine the completeness of the submission package. If the requester's package is complete, then the public should be made aware that the Agency is considering establishing the requested import tolerance. This public notification should occur via publication in the **Federal Register**, the CVM Web site and other avenues, as appropriate. This notification should occur in a timely manner in order to allow for adequate public feedback and consideration of public concerns prior to a decision on the establishment of an import tolerance.

Public comments on this issue included suggestions that requests to establish import tolerances should be disclosed to the public early in the process. Commenters also indicated that submitted data should have the same confidentiality protections as that provided to data submitted as part of a new animal drug application (NADA). Most commenters felt that a Freedom of Information (FOI) summary should be made publicly available following establishment of the import tolerance.

[1] The Secretary of Health and Human Services (the Secretary) has delegated to the Commissioner of Food and Drugs (the Commissioner) the functions vested in the Secretary under the FD&C Act and therefore, the authority under section 512(a)(6) of the FD&C Act is exercised by the Commissioner.

Issue 4: Import Tolerances Effect on the Environment

FDA is considering amending the regulations at 21 CFR 25.33 to allow a categorical exclusion for import tolerances under the National Environmental Policy Act, if there is information that shows that establishing import tolerances does not have a significant effect on the environment. The Agency is seeking information on whether import tolerances will have a significant effect on the environment.

The consensus of VMAC was that they could not think of any instance relative to residues within animal-derived food products that would have a significant environmental impact.

Other public comments on this issue included that categorical exclusion from the requirement to submit an environmental assessment would be appropriate for import tolerances on a case-by-case basis, if no extraordinary circumstances exist.

Issue 5: Please Comment on Any Other Aspects of Import Tolerances You Wish To Raise

There were no additional comments from VMAC.

Other public comments on this issue included that FDA should not establish an import tolerance for a new animal drug not allowed to be used in food animals in the United States or prohibited in the United States from extra-label use in food producing animals. Another comment suggested that an import tolerance for an unapproved new animal drug should apply to domestically-produced animal-derived food. Some commenters questioned whether the Agency would have the resources for residue testing.

B. Current Process for Establishing New Animal Drug Tolerances

1. Overview of the Approval Process for NADAs Submitted Under Section 512(b)(1) of the FD&C Act

Before FDA can approve an NADA submitted under section 512(b)(1) of the FD&C Act, the Agency must, among other things, determine that there is substantial evidence that the new animal drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling, and that the NADA contains full reports of investigations including adequate tests by all methods reasonably applicable to show whether the new animal drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling (21 U.S.C. 360b(d)(1)(A) and (d)(1)(E)). In addition, for new animal drugs intended for use in food-producing animals, in determining whether a new animal drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling, FDA must consider, among other factors, the probable consumption of such drug by humans due to its presence in or on animal-derived food and the effect of such drug on humans (21 U.S.C. 360b(d)(2)). As a part of that determination, FDA may set tolerances for new animal drug residues that occur in the food (21 U.S.C. 360b(d)(1)(F)).

2. Human Food Safety Data Requirements To Establish New Animal Drug Tolerances

The human food safety requirements for approval of an NADA are broadly described in 21 CFR part 500, subpart E and in 21 CFR 514.1(a)(7) and (a)(8). The sponsor of a new animal drug is required to furnish FDA with evidence demonstrating that the residues of the new animal drug in the edible products of treated animals are safe. FDA has developed a number of guidance documents, which are available on the FDA Web site (*http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/ucm123817.htm*), to inform sponsors of the scientific data FDA believes could provide an acceptable basis for determining the human food safety of a new animal drug.

Human food safety data are generated by conducting studies to assess the nature and quantity of residues in foods derived from animals treated with a new animal drug. The human food safety studies fall into three general categories: Toxicity studies; residue chemistry studies; and, for antimicrobial new animal drugs, microbial safety studies.

The toxicity studies are designed to evaluate the oral toxicity of a new animal drug to humans, who may be exposed to the drug through the consumption of food derived from animals treated with the new animal drug. The goal of the toxicity studies is to determine an acceptable daily intake (ADI). The ADI is used to calculate the amount of total residues permitted in each edible tissue, also known as the safe concentration.

The residue chemistry studies are designed to determine the concentration of drug residue actually appearing at the time of slaughter of the target animal in the edible tissues of that animal species as a result of treatment with the proposed new animal drug. Data from studies that investigate the metabolism of the veterinary drug are used to establish a relationship between the residue selected for assay (marker residue) and the concentration of the total residue in the target tissue. These residue chemistry data are used to calculate the tolerance. Tolerances are the maximum concentration of a new animal drug residue that can legally remain in an edible tissue from animals treated with the new animal drug. When a tolerance is assigned for an approved or conditionally approved new animal drug, a practicable regulatory analytical method is also established to quantify and confirm residues of the new animal drug to monitor the safety of the food supply.

For antimicrobial new animal drugs, typically data are generated that support the conduct of a qualitative risk assessment that addresses the release, exposure, and consequence of the effects of the new animal drug on the development of resistant bacteria in or on the target animal and the potential impact on human health.

C. International Harmonization of Food Safety Standards

FDA works toward international harmonization of food safety standards, including food safety controls such as veterinary drug tolerances.

Under the proposed regulation, FDA intends to harmonize its import tolerances with the Maximum Residue Limits (MRLs) established by the Codex Alimentarius Commission of the Joint Food and Agriculture Organization (FAO)/World Health Organization (WHO) Food Standards Program (Codex MRL), provided that the Codex Alimentarius Commission has established a permanent Codex MRL and that the Agency has sufficient information to make a determination that the permanent Codex MRL will protect the U.S. public health and will meet the standards of the FD&C Act. If the Codex Alimentarius Commission has established a permanent Codex MRL for a new animal drug, the Agency would allow the submission of human food safety information in the form of monographs and reports from the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) and/or the Joint Expert Committee on Food Additives of the FAO and the WHO (JECFA) to support the requested import tolerance. The JMPR and/or JECFA monographs and reports provide an evaluation of human food safety data; these data are then used to derive the ADI and the recommended MRL. If FDA review of the committee reports and monographs raises additional scientific concerns that merit more detailed review, the Agency

proposes to require submission of the complete toxicology and residue chemistry study reports, including the underlying data.

If the Codex Alimentarius Commission has not established a permanent Codex MRL for a new animal drug, the Agency proposes to require submission of the complete toxicology and residue chemistry study reports, including the underlying data. In addition, in the absence of a permanent Codex MRL, the Agency proposes that the requester should provide full reports of investigations made with respect to the human food safety of the new animal drug, including data submitted to the appropriate regulatory authority in any country where the new animal drug is lawfully used.

II. Summary of the Proposed Rule

A. Scope (Proposed § 510.201)

Proposed § 510.201 establishes and restricts proposed subpart C to procedures by which the Agency may establish, amend, or revoke an import tolerance for residues of a new animal drug not approved or conditionally approved for use in the United States but lawfully used in other countries and present in imported, animal-derived food and food products, as well as procedures to reconsider or stay actions regarding an import tolerance. Under section 512(a)(6) of the FD&C Act, the Secretary may consider and rely on data submitted to appropriate regulatory authorities in any country where the new animal drug is lawfully used. In addition, the Secretary may use data available from a relevant international organization to the extent such data are not inconsistent with the criteria used to establish a tolerance for new animal drug applications submitted under section 512(b)(1) of the FD&C Act. For purposes of section 512(a)(6) of the FD&C Act, ''relevant international organization'' means the Codex Alimentarius Commission or other international organization deemed appropriate by the Secretary.

When evaluating the residue of a new animal drug as part of the determination of a tolerance, FDA considers the conditions of use including dose, duration, and formulation. The conditions of use can affect the uptake, metabolism, and distribution of the residues in the treated food animal and therefore, are a critical component of the human food safety evaluation for a tolerance of a domestic new animal drug as part of a new animal drug approval. Similarly, the Codex Alimentarius requires that a veterinary drug under evaluation for an MRL be approved in at least one member country in order to assure that the conditions of use are available as part of the scientific evaluation. FDA believes that it would also be important that the evaluation for a tolerance for residues of a new animal drug in imported food consider conditions of use. Consequently, FDA believes that the new animal drug under evaluation must be lawfully used in at least one country in a manner consistent with the conditions of use that cause the residues in the imported food, and that the information resulting from this lawful use be made available to FDA as part of the evaluation for an import tolerance.

B. Definitions (Proposed § 510.203)

Proposed § 510.203 contains definitions for the terms import tolerance and request. The proposed definition of import tolerance (''a tolerance for a residue of a new animal drug not approved or conditionally approved for use in the United States, but present in any imported edible portion of any animal'') is derived from the statutory language, which provides that a use or intended use of a new animal drug shall not be deemed unsafe under section 512 of the FD&C Act, ''if the Secretary establishes a tolerance for such drug and any edible portion of any animal imported into the United States does not contain residues exceeding such tolerance.'' 21 U.S.C. 360b(a)(6). The proposed definition for request (''a request to establish or amend an import tolerance'') sets forth the meaning of the term, as it is used in proposed subpart C.

C. Requests To Establish or Amend an Import Tolerance (Proposed § 510.205)

1. Initiation of a Request To Establish or Amend an Import Tolerance (Proposed § 510.205(a))

Proposed § 510.205(a) provides that any person could request that the Commissioner establish or amend an import tolerance and that such a request would have to be in the form specified in proposed § 510.205, which is described in this section of the document. Proposed § 510.205(a) also provides that the Commissioner could initiate a proceeding to establish or amend an import tolerance on his or her own initiative under 21 CFR 10.25(b).

2. Content and Administration of a Request (Proposed § 510.205(b))

Under this proposed section, a request to establish or amend an import tolerance would have to include the following information: (1) The established name and all pertinent information concerning the new animal drug, including chemical identity and composition of the new animal drug, and its physical, chemical, and biological properties; (2) the conditions of use for the new animal drug, including the route of administration and dosage, together with all labeling, directions, and recommendations regarding the uses in countries in which the new animal drug is lawfully used; (3) the proposed import tolerance(s) for the new animal drug; (4) human food safety information to support the proposed import tolerance(s); and (5) a complete description of a practicable validated method for measuring the residue level in imported edible portions of any animal treated with the new animal drug.

The contents of the request would have to include data sufficient to demonstrate that a proposed tolerance is safe based on similar human food safety criteria used by the Commissioner to establish tolerances for applications for new animal drugs filed under section 512(b)(1) of the FD&C Act. Consistent with section 512(a)(6) of the FD&C Act, information to support the establishment of an import tolerance for a new animal drug could include data submitted by the drug manufacturer, including data submitted to appropriate regulatory authorities in any country where the new animal drug is lawfully used, or data available from a relevant international organization, such as the Codex Alimentarius Commission, to the extent such data are not inconsistent with the criteria used by the Commissioner to establish a tolerance for applications for new animal drugs filed under section 512(b)(1) of the FD&C Act.

Under the proposed rule, human food safety information to support the proposed import tolerance could be submitted in two possible forms. First, if a permanent Codex MRL has been established, the requester would provide the permanent Codex MRL and monographs and reports from the JECFA and/or monographs and reports from the JMPR that support the development of the permanent Codex MRL. FDA could request additional information as needed. If no permanent Codex MRL has been established, or upon notification by FDA, the requester would have to provide full reports of investigations made with respect to the human food safety of the new animal drug.

Should full reports be required by the rule or requested by FDA, a request to establish or amend an import tolerance could be regarded as incomplete unless it includes full reports of adequate tests,

by all methods reasonably applicable, to show whether or not any edible portion of any animal receiving the new animal drug would be safe for human consumption. The reports would have to include detailed data derived from appropriate animal and other biological experiments in which the methods used and the results obtained are clearly set forth. Under the proposed rule, the request would have to include either a statement that all such reports have been submitted or an explanation of why such reports were not submitted. With respect to each nonclinical laboratory study contained in the request, the requestor would have to submit either a statement that the study was conducted in compliance with the good laboratory practice regulations set forth in 21 CFR part 58, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance, and an explanation of how the noncompliance may have impacted the study.

Furthermore, a request to establish or amend an import tolerance would have to include any other information that could be deemed necessary by the Commissioner to address particular human food safety concerns that may be associated with certain new animal drugs or classes of new animal drugs. For example, for certain antimicrobial new animal drugs, the Agency could consider information regarding antimicrobial resistance concerns in making its determination that a proposed import tolerance is safe.

A request to establish or amend an import tolerance would also have to include information on where the new animal drug is lawfully used. Such information includes the conditions of use for the new animal drug, including the route of administration and dosage; labeling; directions; and recommendations. When an import tolerance is established, it would be available to any importer into the United States of the same food product(s) containing the unapproved drug product that is subject to the import tolerance.

The request would also have to include a complete description of a practicable validated method for measuring the residue level of the new animal drug in the imported edible product derived from animals treated with the new animal drug. The availability of such a method is important for monitoring compliance with the import tolerance.

Under this proposed rule, if finalized, a requester would be required to submit an environmental assessment, as described in 21 CFR 25.40, to facilitate the Agency's assessment of potential environmental impacts under the National Environmental Policy Act; Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions,'' of January 4, 1979 (44 FR 1957, January 9, 1979); and 21 CFR 25.60. As previously discussed in this document, the Agency solicited comments on the issue of whether import tolerances will have a significant effect on the environment in the August 2001 ANPRM and January 2002 VMAC. Although categorical exclusions are not addressed in this proposed rule, the Agency is still considering the comments received in response to the August 2001 ANPRM and January 2002 VMAC. If, in the future, the Agency determines it to be appropriate, FDA will consult with the Council on Environmental Quality (CEQ) regarding the establishment of categorical exclusions for certain import tolerance requests. FDA reiterates its previous requests for comments and supporting information relevant to the issue of whether import tolerances will have a significant effect on the environment in the United States or abroad.

Proposed § 501.205(b) provides that requests for an import tolerance would have to be submitted to FDA in triplicate. By prior arrangement, requests could be submitted in an electronic format.

Pertinent information previously submitted to and currently retained in the files of FDA could be incorporated in, and would be considered as part of, a request to establish or amend an import tolerance on the basis of specific reference to such information. If the requester refers to any nonpublic information other than its own, the requester would have to obtain a written right of reference to that nonpublic information and submit such right of reference with the request. Any reference to published information would have to be accompanied by reprints or copies of such references. If a part of the material submitted is in a foreign language, it would have to be accompanied by a complete and accurate English translation. Translations of literature printed in a foreign language would have to be accompanied by copies of the original publication.

Furthermore, the request would have to be dated and signed by the requester or by his or her authorized representative. If the requester or such authorized representative does not reside or have a place of business within the United States, the requester would also have to furnish the name and post office address of, and the request would have to be countersigned by, an authorized attorney, agent, or official residing or maintaining a place of business within the United States.

A request to amend an established import tolerance would have to contain information to support each proposed change. The request could omit statements made in the original request for which no change is proposed.

The requester could withdraw a request to establish or amend an import tolerance at any time before the notification provided for in proposed § 510.205(d)(2) has been made publicly available.

3. Review of Information Submitted in a Request (Proposed § 510.205(c))

In establishing an import tolerance or amending an existing import tolerance, the Commissioner would rely on data sufficient to demonstrate that a proposed tolerance is safe based on similar human food safety criteria used by the Commissioner to establish tolerances for applications for new animal drugs filed under section 512(b)(1) of the FD&C Act. In establishing or amending an import tolerance, the Commissioner would give appropriate consideration to the residue concentrations and conditions of use of the animal drug in the import tolerance request.

4. Disclosure of Information Submitted in a Request (Proposed § 510.205(d))

FDA intends to be as transparent as possible about requests to establish, amend, or revoke import tolerances, as well as the basis for establishing, amending, or revoking import tolerances. This transparency is in response to the VMAC consensus that disclosure of import tolerance requests be made to the public early in the review process. The rule proposes that when a request to establish or amend an import tolerance has been filed, this request would be made publicly available. In addition, the decision to establish, amend, or revoke an import tolerance would be made publicly available. A summary of the basis for the decision would also be publicly released. All information and safety data submitted with, or incorporated by reference in, the request would be available for public disclosure, in accordance with the provisions of part 20 (21 CFR part 20). Trade secrets and confidential commercial or financial information would be exempted from release under § 20.61.

5. Establishment or Amendment of an Import Tolerance (Proposed § 510.205(e))

The rule proposes that when a request to establish or amend an import tolerance is granted, a copy of the public notification would be sent to the requestor. Similarly, when a request to establish or amend an import tolerance is denied, a copy of the notification of the denial would be sent to the requestor as well as made publicly available,. This proposed section also makes clear that if a tolerance is established as part of an approval of a new animal drug application under section 512(b)(1) of the FD&C Act (21 U.S.C. 360b(b)(1)), or conditional approval under section 571 of the FD&C Act, (21 U.S.C. 360ccc), the approved new animal drug tolerance would supersede any existing import tolerance for that new animal drug. A notification that the existing import tolerance has been superseded by a tolerance for that new animal drug would be made publicly available and a copy of th*is* notification would be sent to the requester.

In the event that the conditionally approved application for a new animal drug is not renewed or is withdrawn, or such drug does not achieve full approval under section 512 of the FD&C Act within 5 years following the date of the conditional approval, the Agency would reinstate the import tolerance and a notification would be made available to the public, and copy of this public notification would be sent to the original requestor.

D. Revoking an Import Tolerance (Proposed § 510.207)

Proposed § 510.207 specifies the procedures by which an established tolerance for residues of an unapproved new animal drug in food products of animal origin imported into the United States could be revoked. Section 512(a)(6) of the FD&C Act authorizes this action if information demonstrates that the use of the new animal drug under actual use conditions results in food being imported into the United States with residues exceeding the tolerance or if scientific evidence shows the tolerance to be unsafe. The Commissioner, on his or her own initiative or on the petition of an interested person, under part 10 (21 CFR part 10), could revoke an import tolerance. The grounds for revocation of the import tolerance would be made publicly available.

E. Reconsideration of Action (Proposed § 510.209)

Proposed § 510.209 specifies the process for an interested person to petition that the Commissioner reconsider a decision to establish, amend, or revoke an import tolerance and also provides that the Commissioner could reconsider a decision on his or her own initiative. The section proposes that a petition for reconsideration of such a decision would have to be filed with the Division of Dockets Management under § 10.20, and be in the form set out in § 10.33. Under proposed § 510.209, an interested person would have to petition for reconsideration no later than 30 days after public notification of the decision, although the Commissioner could, for good cause, permit a petition to be filed more than 30 days after public notification of the decision. The petition for reconsideration would have to demonstrate that the Commissioner did not adequately consider relevant information and views that are in the administrative record. No new information could be included in a petition for reconsideration.

F. Administrative Stay of Action (Proposed § 510.211)

Proposed § 510.211 specifies the process for an interested person to petition that the Commissioner stay or extend the effective date of a decision to establish, amend, or revoke an import tolerance. It also provides that the Commissioner, on his or her own initiative, could stay or extend the effective date of a decision to establish, amend, or revoke an import tolerance. The proposed section would specify that a petition for a stay or for an extension of the effective date of such a decision be filed with the Division of Dockets Management in accordance with § 10.20, and be in the form set out in § 10.35. Under proposed § 510.211, an interested person would have to petition the Commissioner stay or extend the effective date of a decision with respect to establishing, amending, or revoking an import tolerance no later than 30 days after the date of public notification, although the Commissioner could, for good cause, permit a petition to be filed more than 30 days after the date of public notification of the decision.

III. Conforming Changes

FDA is proposing conforming changes to certain applicable sections of the Code of Federal Regulations (CFR) that would add a reference to the processes for establishing or amending import tolerances and revoking such tolerances listed under section 512 of the FD&C Act. The affected sections in title 21 of the CFR are:

- § 10.25 Initiation of administrative proceedings.
- § 20.100 Applicability; cross-reference to other regulations.
- § 25.20 Actions requiring preparation of an environmental assessment.

IV. Legal Authority

FDA is proposing this rule under the authority of section 512(a)(6) of the FD&C Act, which states that ''a use or intended use of a new animal drug shall not be deemed unsafe * * * if the Secretary establishes a tolerance for such drug and any edible portion of any animal imported into the United States does not contain residues exceeding such tolerance.'' Furthermore, ''the Secretary may, under procedures specified by regulation, revoke a tolerance established under this paragraph if information demonstrates that the use of the new animal drug under actual use conditions results in food being imported into the United States with residues exceeding the tolerance or if scientific evidence shows the tolerance to be unsafe.'' FDA is also proposing these regulations under section 701(a) of the FD&C Act (21 U.S.C. 371(a)), which authorizes the issuance of regulations for the efficient enforcement of the FD&C Act.

V. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because FDA anticipates most requests will rely on data already gathered, analyzed, and summarized in publicly available dossiers supporting a

permanent Codex MRL, and because FDA has received only two requests to establish import tolerances since 1996, both from large manufacturers of new animal drugs, the Agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

B. The Proposed Rule

FDA is proposing procedures to establish or amend a tolerance for a new animal drug that has not been approved or conditionally approved for use in the United States where edible portions of animals imported into the United States may contain residues of such drugs (import tolerance), as well as procedures to revoke an existing import tolerance. Import tolerances will provide a basis for legally marketing food of animal origin that is imported into the United States containing residues of unapproved new animal drugs. The proposed rule sets forth the information that a requester would need to submit to support the establishment or amendment of an import tolerance. This information may include data submitted by the requester, including data submitted to appropriate regulatory authorities in any country where the new animal drug is used legally, or data available from a relevant international organization such as the Codex Alimentarius Commission. The proposed rule would also require that requests to establish or amend an import tolerance include a practical validated method for measuring the residue level of the new animal drug in the imported edible product derived from animals treated with the new animal drug. The proposed rule also allows for the public notification of requests to establish or amend an import tolerance, information supporting such requests, and for public notification when establishing, amending, or revoking import tolerances. In addition, the proposed rule describes procedures for revoking an existing import tolerance if scientific evidence shows the tolerance to be unsafe or if information demonstrates that use of the new animal drug under actual use conditions results in food being imported into the United States with residues exceeding the tolerance.

C. Need for the Proposed Rule

While interested parties may currently submit requests for the establishment of import tolerances under the authority of the statutory provision (21 U.S.C. 360b(a)(6)), this proposed rule, if finalized, will provide a more efficient method for the submission of requests to establish import tolerances since the regulation would set forth the information required to be submitted in such a request. In addition, under section 512(a)(6) of the FD&C Act, in order to be able to revoke existing import tolerances, the Agency must specify, by regulation, procedures to revoke an import tolerance. This proposed rule, if finalized, would establish such procedures.

D. Benefits of the Proposed Rule

As stated previously in this document, this proposed rule, if finalized, would set forth procedures by which interested parties may submit requests for the establishment, amendment or revocation of an import tolerance. In doing so, the proposed rule, if finalized, should initially increase the number of requests to establish, amend, or revoke an import tolerance the Agency would otherwise expect to receive. Under the new procedures, FDA estimates that it will receive 2.2 requests to establish import tolerances per year. At this time FDA does not expect the number of annual requests to increase any further in future years. FDA currently does not have the data to estimate the value of these import tolerances should they be established. FDA assumes, however, that profits earned importing animal-derived food containing allowable residues of unapproved new animal drugs that are the subject of established import tolerances would be greater than the marginal costs of requesting the establishment of such import tolerances.

E. Costs of the Proposed Rule

1. Requesters

Those who choose to request the establishment, amendment, or revocation of an import tolerance will voluntarily incur compliance costs. These costs are expected to be composed of labor costs for organizing the pertinent information that will be submitted with a request to establish, amend, or revoke an import tolerance.

FDA expects to receive two requests annually to establish import tolerances for unapproved new animal drugs for which a permanent Codex MRL has been established. In these cases, FDA estimates that a requester would expend about 50 hours to locate and review the toxicology and residue chemistry reports from the Codex MRL dossier and to prepare and submit the request to FDA. The median compliance officer wage rate for the pharmaceutical industry (NAICS 325400—Pharmaceutical and Medicine Manufacturing), adjusted 35 percent for benefits, is about $42 per hour. The annual compliance cost for petitioners requesting the establishment of an import tolerance for unapproved new animal drugs with permanent Codex MRLs would be about $4,000 (2 requesters times 50 hours times $42 per hour), or about $2,100 per request.

FDA estimates that it would receive 0.2 requests annually to establish import tolerances for unapproved new animal drugs for which a permanent Codex MRL has not been established. FDA estimates that a requester would expend about 80 hours to prepare such a request. Using the same $42 per hour rate for wages and benefits, the cost to prepare a request of this type would be about $3,300. Since FDA expects only one of these requests every 5 years, the average annual cost would be about $650.

Total annual industry costs for the 2.2 requests to establish an import tolerance are estimated at about $4,800 (2 requests that cost $2,100 each plus one request that costs $650).

Requests to revoke or amend an import tolerance are expected to be extremely infrequent events. FDA believes that these requests are likely to be submitted significantly less than even once every 5 years. FDA recognizes that requesters may incur some administrative costs for time spent in preparing a request to amend or revoke an import tolerance. While FDA has not added such costs to the total compliance cost estimates, due to the relative infrequency of these requests FDA concludes that the annual cost for each of these types of requests would be insignificant. Even in the rare year in which FDA receives one of these requests, at an estimated burden of about 32 labor hours, the marginal cost would amount to about $1,300. This would add about 28 percent to the very low annual costs of the proposed rule.

FDA projects the compliance costs of this rule to industry over a 10-year period at $42,400 using a 3 percent

discount rate, and at $36,300 using a 7 percent discount rate.

2. Government

FDA estimates that each request to establish, amend, or revoke an import tolerance would require up to 100 hours of total time spent in review and document preparation by mid-level FDA employees. Assuming a GS–13, Step-1 hourly pay rate of about $43, with a 35 percent increase for benefits, the 100 hours of labor for each review are estimated to cost about $5,800. This equates to about $12,800 annually for the 2.2 reviews. Over a 10-year period, the administrative costs to the Government are projected at $112,200 using a 3 percent discount rate, and at $96,000 using a 7 percent discount rate.

F. Regulatory Alternatives

Section 4 of the ADAA, which provides for the establishment and revocation of import tolerances, requires FDA to make determinations on requests to establish, amend or revoke import tolerances based on human food safety criteria similar to those used to establish tolerances for new animal drug applications. FDA consulted VMAC at a public meeting in 2001 to discuss issues pertaining to the development of regulations regarding import tolerances. The ADAA language and VMAC recommendations provided a framework for the proposed import tolerance procedures that did not allow for the development of alternative procedures significant enough to have led FDA to estimate a substantially larger or smaller number of annual requests to establish import tolerances than the 2.2 requests previously described.

G. Impacts on Small Entities

The Regulatory Flexibility Act requires Agencies to prepare a regulatory flexibility analysis if a rule is expected to have a significant economic impact on a substantial number of small entities. Although the Agency believes it is very unlikely that significant economic impacts would occur, the Agency cannot rule out this possibility completely because of some uncertainty in the type or size of entities that may request the establishment, amendment, or revocation of import tolerances.

The Regulatory Flexibility Act requires a description of the small entities that would be affected by the rule, and an estimate of the number of small entities to which the rule would apply. FDA believes that manufacturers of new animal drugs will make all or nearly all requests to establish import tolerances. Manufacturers of new animal drugs are classified in the North American Industrial Classification System (NAICS) under industry code 325412—Pharmaceutical Preparation Manufacturing. Census data in this category from 2007 show that 744 companies with 963 establishments manufacture pharmaceuticals in the United States. FDA requests public comment on the probability that any entities other than pharmaceutical manufacturers would request the establishment, amendment, or revocation of an import tolerance.

The Small Business Administration defines those entities within NAICS code 325412 as small entities if they employ less than 750 employees. Census data shows that 711 of the 963 establishments within NAICS code 325412, or 74 percent, had less than 100 employees in 2007. Available Census data from 2007 identifies the number of establishments in NAICS code 325412 with 100 or more employees, but does not identify those with 100 to 749 employees. The 2002 Census data, however, indicates that up to 97 percent of all establishments in NAICS code 325412 have less than 750 employees. The existence of some multi-establishment companies in this NAICS code would likely decrease the number of companies that would meet the definition of a small entity. Regardless, FDA acknowledges that it is likely that a substantial number of pharmaceutical manufacturers would meet the criteria to be considered small entities.

For those establishments with one to four employees and five to nine employees, the average annual value of shipments ranges from $825,000 to $3.37 million in 2002, the latest year for which value of shipments for establishments differentiated by employee size is available. For all establishments with 10 or more employees, it is much greater. If a manufacturer composed of only one establishment of one to four employees requested the establishment of one import tolerance for an unapproved new animal drug that was not the subject of a permanent Codex MRL, the one-time cost of this effort would represent about 0.40 percent of average annual revenues. If this manufacturer requested the establishment of one import tolerance for an unapproved new animal drug that was the subject of a permanent Codex MRL, the one-time cost of this effort would represent about 0.25 percent of average annual revenues. Those establishments with more than 10 employees would incur compliance costs that represent significantly less than 0.1 percent of average revenues from requesting the establishment of an import tolerance for an unapproved new animal drug with or without a permanent Codex MRL. Further, requests to amend or revoke an established import tolerance, which the Agency expects to be submitted significantly less frequently than once every 5 years, would result in compliance costs that represent even smaller percentages of average annual revenues for the establishment sizes listed previously in this document. Accordingly, FDA believes that this proposed rule would not have a significant impact on a substantial number of small entities.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these requirements is given in table 1 of this document with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Import Tolerances for Residues of Unapproved New Animal Drugs in Food.

Description: FDA is proposing procedures by which a person may request that the Agency establish or amend tolerances for unapproved new animal drugs where edible portions of animals imported into the United States may contain residues of such drugs (import tolerance). The Agency is also proposing procedures to revoke an existing import tolerance, as well as procedures for reconsideration of action or an administrative stay of action to establish, amend, or revoke an import tolerance. The ADAA amended the FD&C Act to authorize FDA to establish and revoke import tolerances. Import

tolerances will provide a basis for legally marketing food of animal origin that is imported into the United States and contains residues of unapproved new animal drugs.

If there is a permanent Codex MRL for a new animal drug, the proposed rule provides that the requester should provide, in addition to the requirements outlined in proposed § 510.205(b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(v), and (b)(5)(vi), the permanent Codex MRL and monographs and reports from the JECFA and/or the JMPR that support the development of the Codex MRL.

If there is not a permanent Codex MRL, or upon notification by FDA, the proposed rule provides that the requester should provide, in addition to the requirements outlined in proposed § 510.205(b)(5)(i), (b)(5)(ii), (b)(5)(iii), (b)(5)(v), and (b)(5)(vi), full reports of investigations made with respect to the human food safety of the new animal drug including data submitted to the appropriate regulatory authority in any country where the new animal drug is lawfully used. A request may be regarded as incomplete unless it includes full reports of adequate tests by all methods reasonably applicable to show whether or not food derived from animals receiving the new animal drug will be safe for human consumption.

Description of Respondents: We anticipate that most requests to establish or amend an import tolerance will come from the manufacturer of the unapproved new animal drug at issue in the request. Requests may also be submitted by trade associations of foreign producers who use the unapproved new animal drug or by importers of animal-derived food bearing or containing residues of the unapproved new animal drug. At this time since the Agency has not established an appreciable number of import tolerances, we are unable to estimate the number of requests to revoke an established import tolerance we may receive.

Burden: Interested persons are required to submit human food safety data and other information similar to that used to establish a tolerance under an NADA. The collection of information required for submission of NADAs has been reviewed under the Paperwork Reduction Act of 1995. The Agency has proposed extension of this existing collection most recently in 2007 (72 FR 37240, July 9, 2007). A proportion of the time estimated in that proposed extension for the paperwork associated with the human food safety technical section of an NADA was used to estimate the time (hours per response) presented in table 1 of this document for the preparation of a request to establish or amend an import tolerance not based on a permanent Codex MRL. We believe a request to establish or amend an import tolerance based on a permanent Codex MRL will be less burdensome. Based on the Agency's experience with establishing tolerances for approved new animal drugs, the Agency believes that requests to revoke an import tolerance, as well as petitions for reconsideration of an action or for an administrative stay of an action will be infrequent occurrences.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
510.205(b)(5)(i), (b)(5)(ii), and (b)(5)(iii)	2.2	1	2.2	1	2.2
510.205(b)(5)(iv)(A) (request to establish an import tolerance based on permanent Codex MRL)	2	1	2	50	100
510.205(b)(5)(iv)(B) (request to establish an import tolerance not based on permanent Codex MRL)	0.2	1	0.2	80	16
510.205(b)(6) (request to amend an import tolerance)	0.1	1	0.1	32	3
510.207, 510.209, and 510.211 (request to revoke an import tolerance, for reconsideration of an action or for administrative stay of an action)	0.1	1	0.1	10	1

[1] There are no capital costs or operating costs associated with this collection of information.

The number of respondents and number of responses per respondent listed in table 1 of this document are an estimate based on the Agency's experience since the passage of the ADAA and actual requests received. The average burden per response is an estimate based on the review of the human food safety technical section of an NADA as discussed previously in this document. The number of respondents and number of responses per respondent for §§ 510.207, 510.209 and 510.211 are based on the expectation that such responses will occur infrequently and that the Agency anticipates the average burden per response will require much less time than a request to establish or amend a tolerance.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to fax comments regarding information collection to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, fax: (202) 395–5806.

VII. Environmental Impact

The Agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement is required.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies 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. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 10

Administrative practice and procedure, News media.

21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

21 CFR Part 25

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

21 CFR Part 510

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

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 10, 20, 25, and 510 be amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. In § 10.25, revise paragraph (a)(1) to read as follows:

§ 10.25 Initiation of administrative proceedings.

* * * * *

(a) * * *

(1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71.1 of this chapter, for a food additive petition in §§ 171.1 or 571.1 of this chapter, for a new drug application in § 314.50 of this chapter, for a request to establish or amend an import tolerance in § 510.205 of this chapter, for a new animal drug application in § 514.1 of this chapter, or

* * * * *

PART 20—PUBLIC INFORMATION

3. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

4. In § 20.100, add new paragraph (c)(45) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

(45) Requests to establish or amend import tolerances, in § 510.205 of this chapter.

PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

5. The authority citation for 21 CFR part 25 continues to read as follows:

Authority: 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533, as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

6. In § 25.20, add new paragraph (o) to read as follows:

§ 25.20 Actions requiring preparation of an environmental assessment.

* * * * *

(o) Establishment, amendment, or revocation of an import tolerance in accordance with subpart C of part 510 of this chapter.

PART 510—NEW ANIMAL DRUGS

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

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

8. Revise subpart C to read as follows:

Subpart C—Import Tolerances for Residues of Unapproved New Animal Drugs in Food

Sec.
510.201 Scope.
510.203 Definitions.
510.205 Request to establish or amend an import tolerance.
510.207 Revoking an import tolerance.
510.209 Reconsideration of action.
510.211 Administrative stay of action.

§ 510.201 Scope.

This part applies to tolerances for residues of new animal drugs not approved or conditionally approved for use in the United States, but lawfully used in another country and present in imported animal-derived food and food products.

§ 510.203 Definitions.

The following definitions of terms apply when used in this subpart:

Import tolerance means a tolerance for a residue of a new animal drug not approved or conditionally approved for use in the United States, but present in any imported edible portion of any animal.

Request means a request to establish or amend an import tolerance.

§ 510.205 Request to establish or amend an import tolerance.

(a) *Initiation of a request.* Any person may request that the Commissioner of Food and Drugs (the Commissioner) establish or amend an import tolerance. A request must be in the form specified in this section. The Commissioner may also initiate a proceeding to establish or amend an import tolerance on his or her own initiative under § 10.25(b) of this chapter.

(b) *Content and administration of a request.* (1) Pertinent information previously submitted to and currently retained in the files of the Food and Drug Administration may be incorporated in, and will be considered as part of, a request on the basis of specific reference to such information. If the requester refers to any nonpublic information other than its own, the requester shall obtain a written right of reference to that nonpublic information and submit the right of reference with the request. Any reference to published information offered in support of a request should be accompanied by reprints or copies of such references.

(2) Requests shall be submitted in triplicate and be addressed to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. By prior arrangement, requests may be submitted in an electronic format.

(3) If a part of the material submitted is in a foreign language, it shall be accompanied by a complete and accurate English translation. Translations of literature printed in a foreign language shall be accompanied by copies of the original publication.

(4) The request must be dated and must be signed by the requester or by his or her authorized attorney, agent, or official and shall state the requester's correspondence address. If the requester or such authorized representative does not reside or have a place of business within the United States, the requester must also furnish the name and post office address of, and the request must be countersigned by, an authorized attorney, agent, or official residing or

maintaining a place of business within the United States.

(5) The request must include the following information:

(i) The established name and all pertinent information concerning the new animal drug, including chemical identity and composition of the new animal drug, and its physical, chemical, and biological properties;

(ii) The conditions of use for the new animal drug, including the route of administration and dosage, together with all labeling, directions, and recommendations regarding the uses in countries in which the new animal drug is lawfully used;

(iii) The proposed import tolerance(s) for the new animal drug;

(iv) Human food safety information to support the proposed import tolerance(s) in either of the following forms:

(A) If a permanent Maximum Residue Limit (MRL) has been established by the Codex Alimentarius Committee (Codex MRL), the requester shall provide the permanent Codex MRL and monographs and reports from the Joint Expert Committee on Food Additives (JECFA) of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO) of the United Nations and/or monographs and reports from the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) that support the development of the permanent Codex MRL. FDA may request additional information as needed.

(B) If no permanent Codex MRL has been established, or upon notification by FDA, the requester must provide full reports of investigations made with respect to the human food safety of the new animal drug. A request may be regarded as incomplete unless it includes full reports of adequate tests by all methods reasonably applicable to show whether or not any imported edible portion of any animal receiving the new animal drug will be safe for human consumption. The reports must include detailed data derived from appropriate animal and other biological experiments in which the methods used and the results obtained are clearly set forth, including data submitted to the appropriate regulatory authority in any country where the new animal drug is lawfully used. The request must also include a statement that all such reports have been submitted, or contain an explanation of why such reports were not submitted. With respect to each nonclinical laboratory study contained in the request, the requestor must submit either a statement that the study was conducted in compliance with the good laboratory practice regulations set forth in part 58 of this chapter, or, if the study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance, and how this may have impacted the study;

(v) Other human food safety information as deemed necessary by the Commissioner; and

(vi) A description of practicable methods for determining the quantity, if any, of the new animal drug in or on food, and any substance formed in or on food because of its use.

(6) A request to amend an established import tolerance must contain information to support each proposed change. The request may omit statements made in the original request for which no change is proposed.

(7) The requester may withdraw the request at any time before the notification provided for in paragraph (d)(3) of this section has been made publicly available.

(c) *Review of information submitted in a request.* In establishing or amending an import tolerance, the Commissioner shall rely on data sufficient to demonstrate that a proposed tolerance is safe based on similar food safety criteria used by the Commissioner to establish tolerances for applications for new animal drugs filed under section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act. In establishing or amending an import tolerance, the Commissioner will give appropriate consideration to the anticipated residue concentrations and conditions of use of the new animal drug specified.

(d) *Disclosure of information submitted in a request.* (1) When a request is determined to be complete for FDA's consideration, the Commissioner will provide public notification of the request containing the name of the requester and a brief description of the request in general terms. A copy of the notification will be sent to the requester at the time the information is made available to the public.

(2) A notification establishing, amending, or revoking an import tolerance will be made publicly available. A summary of the basis for the decision will be publicly released in accordance with the provisions of part 20 of this chapter. All information and safety data submitted with the request, or previously submitted information incorporated in, and considered as part of, a request on the basis of specific reference to such information, shall be available for public disclosure, also in accordance with the provisions of part 20 of this chapter. Trade secrets and confidential commercial or financial information are exempted from release under § 20.61 of this chapter.

(e) *Establishment or amendment of an import tolerance.* (1) If a request to establish or amend an import tolerance is granted, the Commissioner will provide public notification establishing or amending an import tolerance, which will be effective from the date of public notification. A copy of the notification will be sent to the requestor at the time the information is made available to the public.

(2) If a request to establish or amend an import tolerance is denied, a notification of the denial will be made publicly available, and a copy of the denial letter, including the reasons for such action, will be sent to the requester.

(3) A tolerance established in an approved new animal drug application submitted under section 512(b)(1) of the Federal Food, Drug, and Cosmetic Act or a conditionally approved application for conditional approval submitted under section 571 of the Federal Food, Drug, and Cosmetic Act, will supersede an existing import tolerance and a notification of such action will be made publicly available and a copy of the notification will be sent to the requester. In the event that the conditionally approved application for a new animal drug is not renewed or is withdrawn, or such drug does not achieve full approval under section 512 of the Federal Food, Drug, and Cosmetic Act within 5 years following the date of the conditional approval, the Agency will reinstate the import tolerance unless § 510.207(a)(1) or (a)(2) applies. A notification of such action will be made publicly available and a copy of the notification will be sent to the original requestor.

§ 510.207 Revoking an import tolerance.

(a) The Commissioner, on his or her own initiative or on the petition of an interested person, under § 10.25 of this chapter, may revoke an import tolerance based upon:

(1) Scientific evidence showing an import tolerance to be unsafe; or

(2) Information demonstrating that the use of a new animal drug results in food being imported into the United States with residues exceeding the import tolerance.

(b) The Commissioner will provide public notification under § 510.205(d)(2) that will specify which of these grounds upon which he or she is acting and will be effective at the time the information is made available to the public.

(c) A petition for revocation must be submitted in the form specified in § 10.30 of this chapter.

§ 510.209 Reconsideration of action.

(a) The Commissioner, on his own initiative or on the petition of an interested person under part 10 of this chapter, may at any time reconsider part or all of a decision to establish, amend, or revoke an import tolerance.

(b) A petition for reconsideration must be submitted in accordance with § 10.20 of this chapter and in the form specified in § 10.33 of this chapter no later than 30 days after the date of public notification of the decision involved. The Commissioner may, for good cause, permit a petition to be filed more than 30 days after public notification of the decision. The grounds must demonstrate that relevant information contained in the administrative record was not previously or not adequately considered by the Commissioner. No new information may be included in a request for reconsideration. An interested person who wishes to rely on information not included in the administrative record shall submit either a request to amend an import tolerance under § 510.205 or a petition to revoke an import tolerance under § 510.207 and § 10.25 of this chapter.

§ 510.211 Administrative stay of action.

(a) The Commissioner, on his or her own initiative or on the request of an interested person under part 10 of this chapter, may at any time stay or extend the effective date of a decision to establish, amend, or revoke an import tolerance.

(b) A request for stay must be submitted in accordance with § 10.20 of this chapter and in the form specified in § 10.35 of this chapter no later than 30 days after public notification of the decision involved. The Commissioner may, for good cause, permit a petition to be filed more than 30 days after public notification of the decision.

Dated: January 19, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1430 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1138]

RIN 1625–AA09

Drawbridge Operation Regulation; Sacramento River, CA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and information on how best to address a proposal to change the operating regulation for the Freeport Drawbridge, mile 46.0, over the Sacramento River. The bridge owner has proposed to change the 6 a.m. and 10 p.m., summer time ''on demand'' bridge opening hours to a new timeframe between 9 a.m. and 5 p.m.; and to extend the annual winter operating schedule to include the month of October, due to a documented decrease in drawbridge openings compared to other nearby bridges. The proposed change is to address the issue of misalignment between drawbridge staffing and actual usage of the drawbridge that currently appears to be resulting in unnecessary staffing of the drawbridge during periods of navigational inactivity. In addressing this issue, the Coast Guard will continue to ensure the reasonable needs of navigation and maritime users are met. We will use your comments to help determine the best means to resolve this issue.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before March 26, 2012 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–1138 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

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

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this notice (USCG–2011–1138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* inserting USCG–2011–1138 in the ''Keyword'' box, and then clicking ''Search.'' If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all

comments and material received during the comment period.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* inserting USCG–2011–1138 in the ''Keyword'' box, and then clicking ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one before the comment period ends, using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in solving this problem, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

Anyone may submit a written request to the District Commander for a permanent change to a drawbridge operating requirement. The request must include documentation supporting or justifying the requested change. If after evaluating the request, the District Commander determines that the requested change is not needed, he or she will respond to the request in writing and provide the reasons for denial of the requested change. If the District Commander decides that a change may be needed, he or she will begin a rulemaking to implement the change.

The Freeport, CA Drawbridge, mile 46.0 over the Sacramento River, is owned by the County of Sacramento and maintained by Sacramento and Yolo Counties. Both counties have submitted a request for a permanent change to the Freeport, CA Drawbridge operating requirements. The existing drawbridge regulation found at 33 CFR 117.189, requires the drawbridges between Isleton, CA and the American River junction (including the Freeport drawbridge), to open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

The Counties who maintain and operate the drawbridge have proposed to change the summer time ''on demand'' bridge opening hours from between 6 a.m. and 10 p.m., to between 9 a.m. and 5 p.m.; and to extend the annual winter operating schedule to include the month of October.

The bridge owner has provided bridge operating statistics that show significantly fewer drawspan operations during 2009–2010 than nearby bridges at Georgiana Slough, Tyler Island and Walnut Grove. The statistical information and a detailed explanation by the bridge owner have been included in the docket and are available for public review and comment. The bridge owner also has indicated a significant amount of outreach has been performed on this proposal to various waterway user organizations including the Pacific Inter-Club Yacht Association, the Recreational Boaters of California, the Capital City Yacht Club, the Sacramento Yacht Club, River View Yacht Club and Hornblower Cruises.

The Coast Guard policy regarding the promulgation of drawbridge operation regulations requires that no regulation shall be implemented for the sole purpose of saving the bridge owner the cost to operate a bridge, nor to save wear and tear mechanically on a bridge. It is the bridge owner's statutory and regulatory responsibility to provide the necessary drawbridge tenders for the safe and prompt opening of a bridge and to maintain drawbridges in good operating condition.

The Freeport Drawbridge provides 29 feet of vertical clearance for vessels above Mean High Water in the closed-to-navigation position and unlimited vertical clearance when open. The Sacramento River is navigable from its confluence with Suisun Bay to mile 245.0 at Red Bluff, CA.

A regulation change to 33 CFR 117.189 may look like the following:

(a) The draws of each bridge from Isleton to the American River junction except for the Sacramento County highway bridge across the Sacramento River, mile 46.0 at Freeport, shall open on signal from May 1 through October 31 from 6 a.m. to 10 p.m. and from November 1 through April 30 from 9 a.m. to 5 p.m. At all other times, the draws shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista bridge across the Sacramento River, mile 12.8.

(b) The draw of the Sacramento County highway bridge, mile 46.0 at Freeport, shall open on signal from May 1 through September 30 from 9 a.m. to 5 p.m. At all other times, the draw shall open on signal if at least four hours notice is given to the drawtender at the Rio Vista Bridge across the Sacramento River, mile 12.8.

Information Requested

To aid us in evaluating this proposed rule, we seek response from all waterway users who navigate in this area and may be affected by the proposed change to the existing operating schedule of the Freeport Drawbridge crossing the Sacramento River (found at 33 CFR 117.189): Based on the last analysis of this waterway the Coast Guard determined in 1986 that the existing regulation met the reasonable needs of waterway traffic while still meeting the needs of land traffic. However, that analysis is over twenty years old, thus, we need current information from waterway users. In particular we would like to receive comments addressing the following questions:

(1) Would the proposal to reduce the summertime ''on demand'' operating hours and to include the month of October in the annual winter operating regulation, result in any negative impact to recreational, commercial or other navigational operation on the waterway?

(2) Would the proposal to reduce the summertime ''on demand'' operating hours and to include the month of October in the annual winter operating regulation, add or subtract transit time through this bridge or on the waterway?

(3) Would the proposal to reduce the summertime ''on demand'' operating hours and to include the month of October in the annual winter operating regulation, result in a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601–612)? The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This document is issued under authority of 5 U.S.C. 552(a); 33 CFR 1.05–1, and 1.05–30.

Dated: January 3, 2012.

J.R. Castillo,

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

[FR Doc. 2012–1440 Filed 1–24–12; 8:45 am]

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DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. PTO–P–2011–0075]

RIN 0651–AC69

Changes To Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to implement the supplemental examination provisions of the Leahy-Smith America Invents Act. The supplemental examination provisions permit a patent owner to request supplemental examination of a patent by the Office to consider, reconsider, or correct information believed to be relevant to the patent. These provisions could assist the patent owner in addressing certain challenges to the enforceability of the patent during litigation. The Office is also proposing to adjust the fee for filing a request for *ex parte* reexamination and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings to more accurately reflect the cost of these processes.

DATES: Written comments must be received on or before March 26, 2012.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *supplemental_examination@uspto.gov*. Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Cynthia L. Nessler, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Cynthia L. Nessler, Senior Legal Advisor ((571) 272–7724), Kenneth M. Schor, Senior Legal Advisor ((571) 272–7710), or Pinchus M. Laufer, Senior Legal Advisor ((571) 272–7726), Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284 (2011). The Office is proposing to amend the rules of practice in title 37 of the Code of Federal Regulation (CFR) to implement the supplemental examination provisions of section 12 of the Leahy-Smith America Invents Act. These provisions permit a patent owner to request supplemental examination of a patent by the Office to consider, reconsider, or correct information believed to be relevant to the patent. The Office is also proposing to set certain fees to implement supplemental examination, to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings.

Section 12 of the Leahy-Smith America Invents Act amends chapter 25 of title 35, United States Code, to add new 35 U.S.C. 257. 35 U.S.C. 257(a) provides for a proceeding titled ''supplemental examination'' that may be requested by the patent owner to consider, reconsider, or correct information believed to be relevant to the patent in accordance with requirements established by the Office. The information that may be presented in a request for supplemental examination is not limited to patents and printed publications, and may include, for example, issues of patentability under 35 U.S.C. 101 and 112. Within three months of the receipt of a request for supplemental examination meeting the requirements of 35 U.S.C. 257, which include the requirements established by the Office, the Office shall conduct supplemental examination and shall conclude the examination (*i.e.,* determine whether there is a substantial new question of patentability) by the issuance of a supplemental examination certificate. The supplemental examination certificate shall indicate whether the items of information presented in the request raise a substantial new question of patentability.

If the supplemental examination certificate, which is issued under 35 U.S.C. 257(a), indicates that a substantial new question of patentability is raised by one or more items of information in the request for supplemental examination, the certificate will indicate that *ex parte* reexamination has been ordered by the Office. The resulting *ex parte* reexamination proceeding will be conducted according to *ex parte* reexamination procedures, except that the patent owner does not have the right to file a statement pursuant to 35 U.S.C. 304, and the basis of the *ex parte* reexamination is not limited to patents and printed publications. Each substantial new question of patentability identified during the supplemental examination proceeding will be addressed by the Office during the resulting *ex parte* reexamination proceeding. *See* 35 U.S.C. 257(b).

35 U.S.C. 257(c) specifies the effect of a supplemental examination under 35 U.S.C. 257(a) on the enforceability of the patent. 35 U.S.C. 257(c)(1) provides that, with two exceptions, a patent shall not be held unenforceable on the basis of conduct relating to information that had not been considered, was inadequately considered, or was incorrect in a prior examination of the patent if the information was considered, reconsidered, or corrected during a

supplemental examination of the patent. The first exception is that 35 U.S.C. 257(c)(1) shall not apply to an allegation pled with particularity in a civil action, or set forth with particularity in a notice received by the patent owner under section 505(j)(2)(B)(iv)(II) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(B)(iv)(II)), before the date of a supplemental examination request under 35 U.S.C. 257(a) to consider, reconsider, or correct information forming the basis for the allegation (35 U.S.C. 257(c)(2)(A)). The second exception is that in an action brought under section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)), or 35 U.S.C. 281, 35 U.S.C. 257(c)(1) shall not apply to any defense raised in the action that is based upon information that was considered, reconsidered, or corrected pursuant to a supplemental examination request under 35 U.S.C. 257(a), unless the supplemental examination, and any *ex parte* reexamination ordered pursuant to the request, are concluded before the date on which the action is brought (35 U.S.C. 257(c)(2)(B)). 35 U.S.C. 257(c)(1) also provides that the making of a request for supplemental examination under 35 U.S.C. 257(a), or the absence thereof, shall not be relevant to enforceability of the patent under 35 U.S.C. 282.

35 U.S.C. 257(d)(1) provides the Director with authority to establish fees for filing a request for supplemental examination and for considering each item of information submitted with the request. If *ex parte* reexamination is ordered under 35 U.S.C. 257(b), 35 U.S.C. 257(d)(1) also establishes that the fees applicable to *ex parte* reexamination must be paid in addition to the fees for supplemental examination. 35 U.S.C. 257(d)(2) provides the Director with authority to establish regulations governing the requirements of a request for supplemental examination, including its form and content.

In accordance with 35 U.S.C. 257(e), if the Office becomes aware, during the course of supplemental examination or of any *ex parte* reexamination ordered under 35 U.S.C. 257, of a material fraud on the Office involving the patent requested to be examined, the Office shall refer the matter to the U.S. Attorney General, in addition to any other actions the Office is authorized to take, including the cancellation of any claims found to be invalid under 35 U.S.C. 307 as a result of *ex parte* reexamination ordered under 35 U.S.C. 257. The Office regards the term ''material fraud'' in 35 U.S.C. 257(e) to be narrower in scope than inequitable conduct as defined by the U.S. Court of Appeals for the Federal Circuit in *Therasense, Inc.* v. *Becton, Dickinson & Co.,* 649 F.3d 1276 (Fed. Cir. 2011).

Section 12 of the Leahy-Smith America Invents Act also indicates, as discussed previously, that nothing in 35 U.S.C. 257 precludes the imposition of sanctions based upon criminal or antitrust laws (including 18 U.S.C. 1001(a)), the first section of the Clayton Act, and section 5 of the Federal Trade Commission Act to the extent that section relates to unfair methods of competition). *See* 35 U.S.C. 257(f)(1). Section 12 of the Leahy-Smith America Invents Act sets forth rules of construction, providing that 35 U.S.C. 257 shall not be construed to limit the authority of the Office to investigate issues of possible misconduct or impose sanctions for misconduct involving matters or proceedings before the Office, or to issue regulations under 35 U.S.C. 32 or 35 U.S.C. 33 relating to sanctions for misconduct by patent practitioners. *See* 35 U.S.C. 257(f)(2) and (f)(3).

To implement the supplemental examination provisions of the Leahy-Smith America Invents Act, the Office is proposing to amend the rules of practice in patent cases as set forth herein. A request for supplemental examination of a patent must be filed by the patent owner. Each request for supplemental examination is limited to the presentation of ten items of information. Supplemental examination addresses allegations of inequitable conduct during patent litigation, which allegations typically concern far fewer than ten items of information. In addition, if a limit of ten items of information is not sufficient for a particular situation, more than one request for supplemental examination of the same patent may be filed at any time. The request for supplemental examination must be accompanied by the fees for processing and treating an *ex parte* reexamination ordered under 35 U.S.C. 257, as well as any applicable document size fees. The request for supplemental examination must meet certain content requirements. Specifically, the request for supplemental examination must include an identification of the patent for which supplemental examination is requested; a list of each item of information and its publication date, if applicable; a list identifying any other prior or concurrent post patent Office proceedings involving the patent to be examined; an identification of each aspect of the patent to be examined; an identification of each issue raised by each item of information; a separate, detailed explanation for each identified issue; an explanation of how each item of information is relevant to each aspect of the patent to be examined and of how each item of information raises each identified issue; a copy of each item of information; and a summary of the relevant portions of any submitted document, other than the request, that is over 50 pages in length. A request for supplemental examination that does not comply with the content requirements may not be granted a filing date. The Office may hold in abeyance action on any petition or other paper filed in a supplemental examination proceeding until after the proceeding is concluded by the electronic issuance of the supplemental examination certificate.

Within three months following the filing date of a request for supplemental examination, the Office will determine whether a substantial new question of patentability affecting any claim of the patent is raised by the items of information presented and identified in the request. The supplemental examination certificate will state the result of this determination. If the supplemental examination certificate states that a substantial new question of patentability is raised by one or more items of information in the request, *ex parte* reexamination of the patent will be ordered under 35 U.S.C. 257. Upon the conclusion of the *ex parte* reexamination proceeding, an *ex parte* reexamination certificate, which will include a statement specifying that *ex parte* reexamination was ordered under 35 U.S.C. 257, will be published as an attachment to the patent. The electronically issued supplemental examination certificate will also remain as part of the public record for the patent. If the supplemental examination certificate states that no substantial new question of patentability was found, and *ex parte* reexamination will not be ordered, then the electronically issued supplemental examination certificate will be published in due course as an attachment to the patent.

The Office must make its determination whether the items of information presented in the request raise a substantial new question of patentability within three months of the filing date of the supplemental examination request. Unlike a request for *ex parte* reexamination, the items of information presented in a request for supplemental examination are not limited to patents and printed publications. The items of information may include any information which the patent owner believes to be relevant to the patent, and which was not considered, was inadequately considered, or was incorrect during the prior examination of the patent. *See* 35

U.S.C. 257(a) and (c). Thus, the variety of information that is permitted to be submitted in a request for supplemental examination, including, for example, transcripts of audio or video recordings, is more extensive than the information permitted to be submitted in an *ex parte* reexamination proceeding. The information permitted in a supplemental examination is anticipated to be more resource-intensive than patents and printed publications to process, review, and treat, because the patent owner may present, in supplemental examination, an item of information that raises multiple issues in addition to those permitted to be raised in *ex parte* reexamination. For example, the patent owner may present one item of information that raises multiple issues of patentability, including issues under 35 U.S.C. 101 and issues under 35 U.S.C. 112 with respect to the original disclosure. For these reasons, the requirements set forth in the proposed rules are designed to permit efficient processing and treatment of each request for supplemental examination within the statutory three-month time period, and to complete any subsequent *ex parte* reexamination ordered as a result of the supplemental examination proceeding with special dispatch.

Discussion of Specific Rules

The following is a discussion of proposed amendments to Title 37 of the Code of Federal Regulations, Part 1.

Section 1.20: The Office is proposing to amend § 1.20 to set fees to implement supplemental examination, to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings.

The authority to set fees for filing a request for supplemental examination and to consider each item of information submitted in the request is provided for in 35 U.S.C. 257(d)(1). *See* 35 U.S.C. 257(d)(1) (''[t]he Director shall by regulation establish fees for the submission of a request for supplemental examination of a patent, and to consider each item of information submitted in the request''). The authority to set fees for filing a request for *ex parte* reexamination is provided for in 35 U.S.C. 302. *See* 35 U.S.C. 302 (''[t]he request must be in writing and must be accompanied by payment of a reexamination fee established by the Director pursuant to the provisions of [35 U.S.C. 41]'').

Section 10(a) of the Leahy-Smith America Invents Act provides that the Office may set or adjust by rule any patent fee established, authorized, or charged under title 35, United States Code, provided that such fees only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (including administrative costs). *See* Public Law 112–29, 125 Stat. 283, 316 (2011).

Sections 10(d) and (e) of the Leahy-Smith America Invents Act set out a process that must be followed when the Office is using its authority under section 10(a) to set or adjust patent fees. *See* Public Law 112–29, 125 Stat. at 317–18. This process does not feasibly permit supplemental examination and the related *ex parte* and *inter partes* reexamination fees to be in place by September 16, 2012 (the effective date of the supplemental examination provisions of the Leahy-Smith America Invents Act). Therefore, the Office is setting these fees pursuant to its authority under 35 U.S.C. 41(d)(2) in this rulemaking, which provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials. *See* 35 U.S.C. 41(d)(2). The Office's analysis of the estimated fiscal year 2013 costs for supplemental examination, *ex parte* reexamination, and petitions filed in *ex parte* and *inter partes* reexamination proceedings is available via the Office's Internet Web site (*http://www.uspto.gov*). The estimated fiscal year 2013 cost amounts are rounded to the nearest ten dollars by applying standard arithmetic rules so that the resulting proposed fee amounts will be convenient to patent users.

The Office is also in the process of developing a proposal to adjust patent fees under section 10 of the Leahy-Smith America Invents Act. The supplemental examination and *ex parte* and *inter partes* reexamination fees proposed in this notice will be revisited in furtherance of the Director's fee-setting efforts in this area.

The Office has estimated its fiscal year 2013 cost for processing and treating a request for supplemental examination to be $5,180, and its fiscal year 2013 cost for conducting *ex parte* reexamination ordered as a result of a supplemental examination proceeding to be $16,116. Therefore, the Office is proposing to add a new § 1.20(k)(1) to provide a fee of $5,180 for processing and treating a request for supplemental examination, and a new § 1.20(k)(2) to provide a fee of $16,120 for conducting *ex parte* reexamination ordered as a result of a supplemental examination proceeding (the 2013 cost amounts rounded to the nearest ten dollars). The $16,120 fee for conducting an *ex parte* reexamination ordered as a result of a supplemental examination proceeding will be returned if *ex parte* reexamination is not ordered. *See* § 1.26(c).

The Office has also estimated its fiscal year 2013 cost for processing and treating documents over 20 sheets in length that are submitted in a supplemental examination proceeding to be $166 for each document between 21 and 50 sheets in length, and $282 for each additional 50-sheet increment or a fraction thereof. Therefore, the Office is also proposing to add a new § 1.20(k)(3) to provide document size fees for any documents over 20 sheets in length that are submitted in a supplemental examination proceeding, including (1) a fee of $170 for each document between 21 and 50 sheets in length; and (2) a fee of $280 for each additional 50-sheet increment or a fraction thereof (the 2013 cost amounts rounded to the nearest ten dollars).

The decision as to whether the information submitted in a request for supplemental examination raises a substantial new question of patentability is identical to the decision as to whether the information submitted in a request for *ex parte* reexamination raises a substantial new question of patentability, except that the information submitted in a request for supplemental examination is not limited to patents and publications. Thus, the Office has analyzed its *ex parte* and *inter partes* reexamination costs to estimate the cost of supplemental examination and resulting *ex parte* reexamination proceedings. The analysis of the Office's *ex parte* and *inter partes* reexamination costs also revealed that the Office's current *ex parte* and *inter partes* reexamination fees are not set at amounts that recover the Office's costs for these processes or services. Thus, the Office is proposing to set fees for supplemental examination and resulting *ex parte* reexamination proceedings, adjust the fee for *ex parte* reexamination proceedings, and set a fee for petitions in *ex parte* and *inter partes* reexamination proceedings. The Office has estimated its fiscal year 2013 cost for conducting *ex parte* reexamination to be $17,753. Therefore, the Office is proposing to amend § 1.20(c)(1) to change the fee for filing a request for *ex parte* reexamination (§ 1.510(a)) from $2,520 to $17,750 (the 2013 cost amounts rounded to the nearest ten dollars).

The Office is also proposing to add a new § 1.20(c)(6) to provide a fee of $1,930 for filing a petition in an *ex parte*

or *inter partes* reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d) (the 2013 cost amounts rounded to the nearest ten dollars). The Office has estimated its fiscal year 2013 cost for the processing and treatment of a petition in a reexamination proceeding is $1,932. The proposed fee for treating a petition in a reexamination proceeding will apply to any petition filed in either an *ex parte* or an *inter partes* reexamination proceeding (except for those specifically enumerated in §§ 1.550(i) and 1.937(d)), including petitions under §§ 1.59, 1.181, 1.182, and 1.183. The proposed fee for treating a petition in an *ex parte* or *inter partes* reexamination proceeding will not apply to petitions specifically enumerated in §§ 1.550(i) and 1.937(d). The petitions enumerated in §§ 1.550(i) and 1.937(d) are petitions under §§ 1.550(c) and 1.956 to extend the period for response by a patent owner, petitions under §§ 1.550(e) and 1.958 to accept a delayed response by a patent owner, petitions under § 1.78 to accept an unintentionally delayed benefit claim, and petitions under § 1.530(l) for correction of inventorship in *ex parte* or *inter partes* reexamination proceedings.

The Office is also proposing to add a new § 1.20(c)(7) to provide a fee of $4,320 for a refused request for *ex parte* reexamination (discussed below), which is included in the fee under § 1.20(c)(1) for filing a request for *ex parte* reexamination. The Office has estimated that its fiscal year 2013 cost of processing a request for *ex parte* reexamination up to the issuance of a decision refusing the request for reexamination is $4,320. Under current practice, if the Office decides not to institute an *ex parte* reexamination proceeding, a portion of the *ex parte* reexamination filing fee paid by the reexamination requester is refunded. This section specifies the portion of the *ex parte* reexamination filing fee that is retained by the Office if the Office decides not to institute the *ex parte* reexamination proceeding.

The Office is not proposing changes to the *inter partes* reexamination filing fee as the Office cannot consider, or even accord a filing date to, a request for *inter partes* reexamination filed on or after September 16, 2012. *See Revision of Standard for Granting an Inter Partes Reexamination Request,* 76 FR 59055, 59056 (Sept. 23, 2011).

Section 1.26: Section 1.26(c) is proposed to be amended to provide that if the Director decides not to institute an *ex parte* reexamination proceeding (a refused reexamination), any fee for filing an *ex parte* reexamination request paid by the reexamination requester, less the fee set forth in § 1.20(c)(7), will be refunded to the reexamination requester. If the Director decides not to institute an *ex parte* reexamination proceeding under § 1.625 as a result of a supplemental examination proceeding, a refund of the *ex parte* reexamination fee ($16,120) for supplemental examination, as set forth in § 1.20(k)(2), will be made to the patent owner who requested the supplemental examination proceeding. The provision for a refund of $7,970 to the *inter partes* reexamination requester, where the Director decides not to institute an *inter partes* reexamination proceeding, is being retained to address any remaining instances of a refusal to institute an *inter partes* reexamination. The reexamination requester or the patent owner who requested the supplemental examination proceeding, as appropriate, should indicate the form in which any refund should be made (*e.g.,* by check, electronic funds transfer, credit to a deposit account). Generally, refunds will be issued in the form that the original payment was provided.

Section 1.550: Section 1.550(i) is proposed to be added to provide that a petition in an *ex parte* reexamination proceeding must be accompanied by the fee set forth in § 1.20(c)(6), except for petitions under § 1.550(c) to extend the period for response by a patent owner, petitions under § 1.550(e) to accept a delayed response by a patent owner, petitions under § 1.78 to accept an unintentionally delayed benefit claim, and petitions under § 1.530(l) for correction of inventorship in an *ex parte* reexamination proceeding.

Section 1.601: Section 1.601(a) is proposed to require that a request for supplemental examination of a patent must be filed by the owner(s) of the entire right, title, and interest in the patent. Section 1.601(b) is proposed to require that the patent owner must establish an ownership interest in the patent as set forth in § 1.601(a) by filing, as part of the request, a submission in accordance with § 3.73(b).

Section 1.601(c) is proposed to prohibit third parties from filing papers or otherwise participating in any manner in a supplemental examination proceeding. Section 12 of the Leahy-Smith America Invents Act specifies that a request for supplemental examination may be filed by the patent owner. *See* 35 U.S.C. 257(a). There is no provision for participation in any manner by a third party in a supplemental examination proceeding. In addition, because the patent owner filed the request, third party participation is also prohibited in any *ex parte* reexamination ordered under 35 U.S.C. 257 and § 1.625, pursuant to *ex parte* reexamination practice.

Section 1.605: Section 1.605(a) is proposed to require that each request for supplemental examination may request that the Office consider, reconsider, or correct no more than ten items of information believed to be relevant to the patent. In other words, the number of items of information that may be submitted as part of each request is limited to ten (10). The amount of information that may be included with each request is limited in order to permit full and comprehensive treatment of each item of information within the three-month statutory time period. Section 1.605(a) is also proposed to permit the filing of more than one request for supplemental examination of the same patent at any time. The patent owner is not precluded from obtaining review of any item of information as a result of the ten-item limit, because the patent owner may file multiple requests for supplemental examination of the same patent at any time.

Section 1.605(b) is proposed to require that an ''item of information'' includes a supporting document submitted as part of the request that contains information, believed to be relevant to the patent, that the patent owner requests the Office to consider, reconsider, or correct. Examples include a journal article, a patent, an affidavit or declaration, or a transcript of an audio or video recording, each of which may be considered an item of information. If the information to be considered, reconsidered, or corrected is not, at least in part, contained within or based on any supporting document submitted as part of the request, the discussion within the body of the request relative to the information will be considered as the item of information. For example, if the patent owner raises an issue under 35 U.S.C. 101, and the issue is wholly contained in a discussion within the body of the request and is not based, at least in part, on any supporting document, the discussion in the request will be considered as the item of information. If, however, the patent owner is presenting a copy of a supporting document within the body of the request, such as an image of an electronic mail message or other document, a separate copy of the supporting document must be provided, which will be considered as an item of information. The patent owner may not avoid the counting of an item of information by inserting the content of the supporting document within the body of the request. As another example, if the patent owner presents an

argument in the request regarding an issue under 35 U.S.C. 102, such as a potential public use or sale of the claimed invention, and also submits a supporting document with the request as possible evidence of the public use or sale, or the lack thereof, the supporting document containing the possible evidence will be considered as the item of information.

Section 1.605(c) is proposed to require that an item of information must be in writing in accordance with § 1.2. The Office does not currently have the capability of retaining records in unwritten form. For this reason, any audio or video recording must be submitted in the form of a written transcript in order to be considered. A transcript of a video may be submitted together with copies of selected images of the video, and a discussion of the correlation between the transcript and the copies of the images.

Section 1.605(d) is proposed to require that if an item of information is combined in the request with one or more additional items of information, including instances where it may be necessary to combine items of information in order to raise an issue to be considered, reconsidered, or corrected, each item of information of the combination may be separately counted. For example, if the patent owner requests consideration of a possible rejection of the claims under 35 U.S.C. 103(a) over a combination of reference A in view of reference B, reference A and reference B will be separately counted as items of information. Exceptions to this provision include the combination of a non-English language document and its translation, and the combination of a document that is over 50 pages in length and its summary pursuant to § 1.610(b)(11).

Section 1.610: Proposed § 1.610 governs the content of the request for supplemental examination. Consistent with the requirement in 35 U.S.C. 257(d) to establish fees, § 1.610(a) requires that the request be accompanied by the fee for filing a request for supplemental examination as set forth in § 1.20(k)(1), the fee for *ex parte* reexamination ordered as a result of a supplemental examination proceeding as set forth in § 1.20(k)(2), and any applicable document size fees as set forth in § 1.20(k)(3).

Proposed § 1.610(b) sets forth content requirements for a request for supplemental examination. Section 1.610(b)(1) is proposed to require that the request include a cover sheet itemizing each component submitted as part of the request. A ''component'' may be a certificate of mailing, the request, the patent to be examined, an item of information, and any other separate document that is deposited with the request.

Section 1.610(b)(2) is proposed to require that the request include a table of contents for the request. Section 1.610(b)(3) is proposed to require that the request include an identification of the number, the date of issue, and the first named inventor of the patent for which supplemental examination is requested.

Section 1.610(b)(4) is proposed to require that the request include a list of each item of information that is requested to be considered, reconsidered, or corrected, and the publication date for each item of information, if applicable. This list must include each of the items of information on which the request is based. If the item of information is a discussion contained within the body of the request, as discussed previously, the pages of the request on which the discussion appears, and a brief description of the item of information, such as ''discussion in request of why the claims are patentable under 35 U.S.C. 101, pages 7–11'', must be listed. Section 1.610(b)(4) is also proposed to require a statement that: (1) Identifies each item of information that was not considered in the prior examination of the patent, and explains why consideration of the item of information is being requested; (2) identifies each item of information that was not adequately considered in the prior examination of the patent, and explains why reconsideration of the item of information is being requested; and (3) identifies each item of information that was incorrect in the prior examination of the patent, and explains how it is being corrected. For example, the patent owner may state that a declaration under § 1.132, which was presented during the prior examination of the patent as evidence of unexpected results, provided analytical data that was later determined to be erroneous or incorrect. The patent owner may present a corrected declaration under § 1.132 and explain how the previously submitted, erroneous data is being corrected. As another example, the patent owner may submit a patent with the request as an item of information, and explain that the patent was not considered (or was inadequately considered) during the prior examination, and that consideration (or reconsideration) of the patent is requested because it raises an issue under 35 U.S.C. 103 with respect to the claims of the patent for which supplemental examination has been requested. An amendment, however, is not an item of information. If the patent owner merely wishes, without more, to amend the claims or to add new claims, in order to further define the invention, the patent owner may file a reissue application. Similarly, a benefit claim may be corrected merely by filing an appropriate petition and/or a reissue application, as applicable. However, the patent owner may also, if desired, file the appropriate petition with the request for supplemental examination in order to correct the benefit claim.

Section 1.610(b)(5) is proposed to require that the request include a list identifying any other prior or concurrent post patent Office proceedings involving the patent for which the current supplemental examination is requested, including an identification of the type of proceeding (*e.g., ex parte* or *inter partes* reexamination, reissue, supplemental examination, post-grant review, *inter partes* review), the identifying number of any such proceeding (*e.g.,* a control number or a reissue application number), and the filing date of any such proceeding.

Section 1.610(b)(6) is proposed to require that the request include an identification of each aspect of the patent to be examined. Examples of an ''aspect of the patent'' include the abstract, any drawing, specification, patent claims, or benefit claims. If any of the claims identified for examination include one or more means-plus-function or step-plus-function elements as set forth in 35 U.S.C. 112(f), as amended by the Leahy-Smith America Invents Act, the request must include an identification of the structure, material, or acts in the specification that correspond to each means-plus-function or step-plus-function element of each claim to be examined.

Section 1.610(b)(7) is proposed to require that the request include an identification of each issue of patentability raised by each item of information. An item of information may raise more than one issue of patentability. For example, a journal article or reference patent may raise an issue under 35 U.S.C. 102, 35 U.S.C. 103, 35 U.S.C. 112, or obviousness-type double patenting, as appropriate. A discussion in the body of the request may raise an issue under 35 U.S.C. 101. A sales invoice or advertisement may raise an issue under 35 U.S.C. 102.

Section 1.610(b)(8) is proposed to require that the request include a separate, detailed explanation for each identified issue of patentability, in order to determine whether the submitted

items of information are appropriate for supplemental examination, and to better analyze the information submitted with the request. The explanation must also discuss how each item of information is relevant to each aspect of the patent identified for examination. In addition, the explanation must discuss how each item of information raises each issue identified for examination. For example, the explanation must discuss how each claim limitation is met, or is not met, by an item of information, such as a patent which qualifies as prior art under 35 U.S.C. 102.

Section 1.610(b)(8)(i) is proposed to require that, where an identified issue involves the application of 35 U.S.C. 101 (other than double patenting) or 35 U.S.C. 112, the explanation must discuss the support in the specification for each limitation of each claim identified for examination with respect to this issue. Section 1.610(b)(8)(ii) is proposed to require that, where an identified issue involves the application of 35 U.S.C. 102, 35 U.S.C. 103, or double patenting, the explanation must discuss how each limitation of each claim identified for examination with respect to this issue is met, or is not met, by each item of information. The detailed explanation may also include an explanation of how the claims distinguish over the items of information. For example, for an item of information that is identified as raising an issue under 35 U.S.C. 102 with respect to claims 1 through 10, such as a patent which qualifies as prior art under 35 U.S.C. 102, the explanation must discuss how each claim limitation in each of claims 1 through 10 is met, or is not met, by the item of information. Preferably, the explanation employs a claim chart that matches each claim limitation to cited portions of the item of information, as applicable. The requirements for this explanation are anticipated to be substantially similar to the requirements for a detailed explanation under § 1.510(b)(2) in a request for *ex parte* reexamination, for items of information that raise issues that are relevant to the patent claims. In other words, this explanation must state, in sufficient detail, for each identified issue, how an item of information is applied to the patent.

Section 1.610(b)(9) is proposed to require that the request include a copy of the patent for which supplemental examination is requested, and a copy of any disclaimer, certificate of correction, certificate of extension, supplemental examination certificate, post grant review certificate, *inter partes* review certificate, or ex parte or *inter partes* reexamination certificate issued for the patent.

Section 1.610(b)(10) is proposed to require that the request include a copy of each item of information listed in § 1.610(b)(4), accompanied by a written English translation of all of the necessary and pertinent parts of any non-English language document. Items of information that form part of the discussion within the body of the request as specified in § 1.605(b), and copies of U.S. patents and U.S. patent application publications, are not required to be submitted.

Section 1.610(b)(11) is proposed to require that the request include a summary of the relevant portions of any submitted document (including patent documents), other than the request, that is over 50 pages in length. The summary must include citations to the particular pages containing the relevant portions. This summary may be similar to the requirement, for information disclosure statements, of a discussion of the relevant and pertinent parts of a non-English language document. This requirement will assist the Office in treating information presented in lengthy documents within the statutory three-month time period. Patent owners are encouraged to redact lengthy documents to include only the relevant portions, unless the redaction would remove context such that the examiner would not be provided with a full indication of the relevance of the information.

Section 1.610(b)(12) is proposed to require that the request must include a submission by the patent owner in compliance with § 3.73(b) establishing the entirety of the ownership in the patent requested to be examined, as set forth in § 1.601(b).

Proposed § 1.610(c) provides that the request may include an explanation why each item of information does or does not raise a substantial new question of patentability. Patent owners are strongly encouraged to submit such explanation, which will assist the Office in analyzing the request.

Proposed § 1.610(d) provides that the filing date of a request for supplemental examination will not be granted if the request is not in compliance with §§ 1.605, 1.615, and 1.610(a) and (b). A defective request may be granted a filing date if the defects are limited to the omission of one or more of the requirements set forth in § 1.610(b)(1) or (b)(2), subject to the discretion of the Office.

Proposed § 1.610(e) provides that if the Office determines that the request, as originally submitted, is not entitled to a filing date pursuant to § 1.610(d), then the patent owner will be so notified and will generally be given an opportunity to complete the request within a specified time. If the patent owner does not timely comply with the notice, the request for supplemental examination will not be granted a filing date and the fee for *ex parte* reexamination as set forth in § 1.20(k)(2) will be refunded. If the patent owner timely files a corrected request in response to the notice that properly addresses all of the defects set forth in the notice and that otherwise complies with all of the requirements of §§ 1.605, 1.610 and 1.615, the filing date of the supplemental examination request will be the receipt date of the corrected request.

Section 1.615. Section 1.615(a) is proposed to require that all papers submitted in a supplemental examination proceeding must be formatted in accordance with § 1.52, including the request and any other documents generated by the patent owner/requester, such as translations of non-English language documents, transcripts of audio or video recordings, affidavits or declarations, and summaries of documents over 50 pages in length pursuant to § 1.610(b)(11). Exceptions include tables of contents, curriculum vitae, claim charts, court documents, third-party-generated affidavits or declarations, and any other document generated by a third party, including patents, patent application publications, and non-patent literature. However, such documents must be presented in a form having sufficient clarity and contrast between the paper and the text or image to permit the direct reproduction of readily legible copies by use of digital imaging and optical character recognition.

Section 1.615(b) is proposed to require that court documents and non-patent literature may be redacted, but must otherwise be identical both in content and in format to the original documents, and if a court document, to the document submitted in court, and must not otherwise be reduced in size or modified, particularly in terms of font type, font size, line spacing, and margins. Patents, patent application publications, and third-party-generated affidavits or declarations must not be reduced in size or otherwise modified in the manner described in this paragraph.

Section 1.620: Section 1.620(a) is proposed to require that, within three months following the filing date of a request for supplemental examination, the Office will determine whether a substantial new question of patentability affecting any claim of the patent is raised by any of the items of information properly presented in the

request. The standard for determining whether an item of information submitted with the request raises a substantial new question of patentability will be the standard set forth in the *Manual of Patent Examining Procedure* (MPEP): *i.e.,* whether there is a substantial likelihood that a reasonable examiner would consider the item of information important in determining patentability. *See* MPEP § 2242 (8th ed. 2001) (Rev. 8, July 2010). This determination will generally be limited to a review of the issues identified in the request as applied to the identified aspect(s) of the patent. For example, a determination on a request that includes three items of information, wherein each item is identified as raising an issue under 35 U.S.C. 102 with regard to claim 1, will generally be limited to whether any of the three items of information raise a substantial new question of patentability with respect to claim 1. If the patent owner is interested in having more issues addressed for an item of information, the patent owner must identify every issue and provide the required explanation(s) in the request for supplemental examination. Similarly, if the patent owner is interested in applying an item of information to more aspects of the patent (*e.g.,* to more claims), the request for supplemental examination must include an identification of each aspect to which the item of information is to be applied and the required explanation(s). For example, if the patent owner fails to apply an item of information to certain claims, then the patent owner is not entitled to a determination for that item of information as applied to such claims. The determination will be based on the claims in effect at the time of the determination. The supplemental examination certificate, which contains the determination, will become a part of the official record of the patent.

Proposed § 1.620(b) provides that the Office may hold in abeyance an action on any petition or other paper filed in a supplemental examination proceeding until after the proceeding is concluded by the electronic issuance of the supplemental examination certificate as set forth in § 1.625. The only actions by the Office on the request are: (1) A determination of whether the request is entitled to a filing date; and (2) a determination of whether any of the items of information submitted with the request raise a substantial new question of patentability. The only relevant type of petition that the Office anticipates will be filed in a supplemental examination proceeding would involve the filing date of the request, which is not relevant to the determination of whether any of the items of information submitted with the request raises a substantial new question of patentability. Holding in abeyance a decision on such a petition will assist the Office in making the determination regarding the substantial new question within the three-month statutory period.

Proposed § 1.620(c) provides that if an unauthorized or otherwise improper paper is filed in a supplemental examination proceeding, it will not be entered into the official file or considered, or, if inadvertently entered, it will be expunged.

Section 1.620(d) is proposed to require that the patent owner must, as soon as possible upon the discovery of any other prior or concurrent post patent Office proceeding involving the patent for which the current supplemental examination is requested, file a paper limited to bare notice of the post patent Office proceeding, if such notice has not been previously provided with the request. The Office anticipates that a patent for which supplemental examination is requested is likely to be involved in other Office post patent proceedings, including another supplemental examination proceeding. Knowledge of other proceedings is important to ensure a quality determination. In addition, bare notice is required due to the statutory three-month period within which the Office must process the information. The notice is limited to an identification of the post patent proceeding, including the type (*e.g., ex parte* or *inter partes* reexamination, reissue, supplemental examination, post-grant review, or *inter partes* review), an identifying number, such as a control number or reissue application number, and the filing date of the post patent Office proceeding. The notice may not include any discussion of the issues present in the current supplemental examination proceeding or in the identified post patent Office proceeding(s). If the paper containing the notice is not so limited, the paper will be held to be improper, and will be processed as an unauthorized paper.

Section 1.620(e) is proposed to prohibit interviews in a supplemental examination proceeding. This requirement will assist the Office to process the request for supplemental examination within the three-month statutory period. A telephone call to the Office to confirm receipt of a request for supplemental examination, or to discuss general procedural questions, is not considered to be an interview for the purposes of this provision. This prohibition against interviews applies only to supplemental examination proceedings. As to any *ex parte* reexamination ordered as a result of the supplemental examination proceeding, interview practice is governed by the regulations governing *ex parte* reexamination proceedings. See, e.g., § 1.560.

Proposed § 1.620(f) provides that no amendment to any aspect of the patent may be filed in a supplemental examination proceeding. Amendments to any aspect of the patent are not items of information, and are not appropriate in a supplemental examination proceeding. As specified in 35 U.S.C. 257(b), the patent owner does not have the right to file a statement under 35 U.S.C. 304. See proposed § 1.625(d)(1). 35 U.S.C. 304 permits a patent owner to file an amendment by including the amendment with the patent owner's statement prior to an initial Office action. However, because the *ex parte* reexamination proceeding does not exist prior to the order under 35 U.S.C. 257 and the patent owner is precluded from filing a statement under 35 U.S.C. 304, no amendment may be filed from the time the request for supplemental examination is filed, until after the issuance of an initial Office action on the merits in any *ex parte* reexamination proceeding ordered under 35 U.S.C. 257.

Proposed § 1.620(g) provides that, if the Office becomes aware, during the course of a supplemental examination or of any *ex parte* reexamination ordered under 35 U.S.C. 257, of a material fraud on the Office involving the patent requested to be examined, the supplemental examination proceeding or any *ex parte* reexamination proceeding ordered under 35 U.S.C. 257 will continue. The matter will be referred to the U.S. Attorney General in accordance with 35 U.S.C. 257(e).

Section 1.625: Proposed § 1.625(a) provides that a supplemental examination proceeding will conclude when the supplemental examination certificate is electronically issued. The supplemental examination certificate will be electronically issued in the Office image file wrapper (IFW) system and the Patent Application Information Retrieval (PAIR) system within three months of the filing date of the request. Electronic issuance of the supplemental examination certificate will permit the Office to issue the certificate within the three-month statutory period and will permit additional time to review the items of information provided by the request, which would otherwise not be available if the certificate were to go through the Office's publication process,

which currently takes approximately eight weeks to complete. The certificate will be viewable by the public in Public PAIR. The supplemental examination certificate will indicate the result of the determination whether any of the items of information presented in the request raised a substantial new question of patentability.

Proposed § 1.625(b) provides that, if the supplemental examination certificate indicates that a substantial new question of patentability is raised by one or more items of information in the request, *ex parte* reexamination of the patent will be ordered under 35 U.S.C. 257. Upon the conclusion of the *ex parte* reexamination proceeding, an *ex parte* reexamination certificate, which will include a statement specifying that *ex parte* reexamination was ordered under 35 U.S.C. 257, will be published as an attachment to the patent by the Office's patent publication process. The electronically issued supplemental examination certificate will also remain as part of the public record for the patent.

Proposed § 1.625(c) provides that, if the supplemental examination certificate indicates that no substantial new question of patentability is raised by any of the items of information in the request, and *ex parte* reexamination is not ordered under 35 U.S.C. 257, the electronically issued supplemental examination certificate will be published in due course by the Office's patent publication process as an attachment to the patent. The reexamination fee for supplemental examination, as set forth in § 1.20(k)(2), will be refunded in accordance with § 1.26(c).

Proposed § 1.625(d) provides that any *ex parte* reexamination ordered under 35 U.S.C. 257 will be conducted in accordance with §§ 1.530 through 1.570, which govern *ex parte* reexamination, except that: (1) The patent owner will not have the right to file a statement pursuant to § 1.530, and the order will not set a time period within which to file such a statement; (2) *ex parte* reexamination of any aspect of the patent may be conducted on the basis of any item of information as set forth in § 1.605, and is not limited to patents and printed publications or to subject matter that has been added or deleted during a reexamination proceeding, which differs from the provisions of § 1.552; (3) issues in addition to those raised by patents and printed publications and by subject matter added or deleted during an *ex parte* reexamination proceeding may be considered and resolved; and (4) information material to patentability will be defined by § 1.56(b) for the purposes of a supplemental examination proceeding, and any resulting *ex parte* reexamination proceeding. Because supplemental examination is not limited to patents and printed publications, any aspect of the patent, including the original specification, may be examined. The material to patentability standard applicable to patent applications (§ 1.56(b)) is proposed for *ex parte* reexamination resulting from a supplemental examination because the material to patentability standard applicable to *ex parte* reexaminations (§ 1.555(b)) is limited to patents and printed publications, and an *ex parte* reexamination resulting from supplemental examination is not limited to patents and printed publications. Any reference to ''applicant'' in § 1.56(b) will be read as ''patent owner.''

Section 1.937: Section 1.937(d) is proposed to be added to provide that a petition in an *inter partes* reexamination proceeding must be accompanied by the fee set forth in § 1.20(c)(6), except for petitions under § 1.956 to extend the period for response by a patent owner, petitions under § 1.958 to accept a delayed response by a patent owner, petitions under § 1.78 to accept an unintentionally delayed benefit claim, and petitions under § 1.530(l) for correction of inventorship in an *inter partes* reexamination proceeding.

The Office would also make appropriate reference to supplemental examination in title 37 CFR (*e.g.,* §§ 3.71, 3.73).

Rulemaking Considerations

A. Administrative Procedure Act

This notice proposes to amend the rules of practice in patent cases to implement the supplemental examination provisions of the Leahy-Smith America Invents Act. The Office is also proposing to adjust the fee for filing a request for *ex parte* reexamination and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings to more accurately reflect the cost of these processes. The changes being proposed in this notice do not change the substantive criteria of patentability. These proposed changes involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 242, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law) and thirty-day advance publication is not required pursuant to 5 U.SC. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). The Office, however, is publishing these proposed changes and the Initial Regulatory Flexibility Act analysis, below, for comment as it seeks the benefit of the public's views on the Office's proposed implementation of these provisions of the Leahy-Smith America Invents Act.

B. Initial Regulatory Flexibility Analysis

1. Description of the Reasons That Action by the Agency Is Being Considered

The Office is proposing to amend the rules of patent practice to implement the supplemental examination provisions of the Leahy-Smith America Invents Act, which take effect September 16, 2012. The Office is also proposing to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings, to more accurately reflect the cost of these processes.

2. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rules

The objective of the proposed rules to implement the supplemental examination provisions of the Leahy-Smith America Invents Act is to establish a process which allows: (1) Patent owners to exercise their statutory right to request supplemental examination to consider, reconsider, or correct information believed to be relevant to a patent; and (2) the Office to make its determination whether the information presented in the request raises a substantial new question of patentability within three months of the filing date of the supplemental examination request. The objective of the proposed rules to adjust the fee for

filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings, is to recover the estimated average cost to the Office of *ex parte* reexamination proceedings and petitions filed in *ex parte* and *inter partes* reexamination proceedings.

Section 12 of the Leahy-Smith America Invents Act provides a legal basis for the proposed rules to implement supplemental examination. 35 U.S.C. 41(d)(2) provides a legal basis for the proposed rules to set the fee for supplemental examination, to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings. Specifically, 35 U.S.C. 41(d)(2) provides that fees for all processing, services, or materials relating to patents not specified in 35 U.S.C. 41 are to be set at amounts to recover the estimated average cost to the Office of such processing, services, or materials.

3. Description and Estimate of the Number of Affected Small Entities

a. Size Standard and Description of Entities Affected. The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the Regulatory Flexibility Act, and after consultation with the Small Business Administration, the Office formally adopted an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is SBA's previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. *See* 13 CFR 121.802. If patent applicants identify themselves on a patent application as qualifying for reduced patent fees, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Unlike the SBA small business size standards set forth in 13 CFR 121.201, the size standard for USPTO is not industry-specific. Specifically, the Office's definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR at 67112 (Nov 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (Dec. 12, 2006).

b. Overview of Estimates of Number of Entities Affected. The proposed rules will apply to any small entity that files a request for supplemental examination, a request for *ex parte* reexamination, or a petition in an *ex parte* and *inter partes* reexamination proceeding. To estimate the number of requests for supplemental examination, *ex parte* reexamination, and petitions filed in *ex parte* and *inter partes* reexamination expected to be submitted annually by small entities, the Office considered the information concerning *ex parte* reexamination filings published in the *United States Patent and Trademark Office Performance and Accountability Report, Fiscal Year 2011.* The Office received 758 requests for *ex parte* reexamination in fiscal year 2011, of which 104 (14 percent) were by the patent owner and 654 (86 percent) were by a third party. *See United States Patent and Trademark Office Performance and Accountability Report, Fiscal Year 2011,* at 171 (table 14A) (2011). Based upon that information, the Office estimates that it will receive about 800 (758 rounded to be nearest 100) requests for *ex parte* reexamination annually and that about 14 percent of all requests for *ex parte* reexamination are filed by patent owners.

c. Number of Entities Filing Requests for Ex Parte Reexamination. As discussed previously, the Office estimates that it will receive about 800 requests for *ex parte* reexamination annually and about 14 percent of all requests for *ex parte* reexamination are filed by patent owners. Thus, the Office estimates that it receives approximately 110 (14 percent of 800 rounded to the nearest 10) requests for *ex parte* reexamination filed by patent owners annually. Due to the availability of supplemental examination beginning in fiscal year 2013, the Office estimates that all 110 requests for *ex parte* reexamination that would have been filed annually by patent owners will instead be filed as requests for supplemental examination. Therefore, the Office estimates that a total of approximately 690 (86 percent of 800 rounded to the nearest 10) requests for *ex parte* reexamination (all by third parties) will be filed annually.

Reexamination requesters are not required to identify their small entity status. Therefore, the Office does not have precise data on the number of requests for *ex parte* reexamination submitted annually by small entities. However, the Office tracks the number of requests for *ex parte* reexamination that are filed in which the patent that is the subject of the reexamination was prosecuted under small entity status. For fiscal year 2011, approximately 36 percent of the requests for *ex parte* reexamination that were filed sought reexamination of a patent that was prosecuted under small entity status.

It is difficult to estimate what fraction of the anticipated 690 requests for *ex parte* reexamination submitted annually will be by small entities, because reexamination requesters are not required to identify their small entity status. The data that the Office keeps regarding the number of requests for *ex parte* reexamination that are filed in which the patent that is the subject of the reexamination was prosecuted under small entity status provides no insight into the number of requests for *ex parte* reexamination submitted by small entity third party requesters. Therefore, for purposes of this analysis, the Office is considering all 690 requests for *ex parte* reexamination expected to be submitted annually as being submitted by small entities.

d. Number of Entities Filing Petitions in Ex Parte Reexamination Proceedings. The proposed rule to set a fee for petitions filed in reexamination proceedings (except for those petitions specifically enumerated in 37 CFR 1.550(i) and 1.937(d)) will apply to any small entity that files a petition in a reexamination proceeding. The Office decided 832 petitions in reexamination proceedings (*ex parte* and *inter partes*) in fiscal year 2010. In view of the

statutory mandate to conduct reexamination proceedings with special dispatch, the Office estimates that the 832 petitions decided in reexamination proceedings in fiscal year 2010 reasonably approximates the number of petitions filed in reexamination proceedings in fiscal year 2010. In view of the proposed fee for petitions filed in reexamination proceedings, the Office estimates that no more than 850 (832 rounded to the nearest 50) will be filed annually in reexamination proceedings. The data that the Office keeps regarding petitions filed in reexamination proceedings does not indicate the number of petitions submitted by unique small entities. Therefore, for purposes of this analysis, the Office is considering all 850 petitions expected to be submitted annually in a reexamination proceeding as being submitted by small entities. Hence, the Office estimates that no more than 850 small entities will file a petition in a reexamination proceeding annually.

e. Number of Entities Filing Request for Supplemental Examination. In view of the benefits to patent owners afforded by supplemental examination at 35 U.S.C. 257(c), the Office is estimating that all 110 requests for *ex parte* reexamination that would have been filed annually by patent owners will instead be filed as requests for supplemental examination. However, the Office is also estimating that more than 110 requests for supplemental examination will be filed annually due to a combination of: (1) The benefits to patent owners afforded by supplemental examination; (2) the fact that the ''information'' that may form the basis of a request for supplemental examination is not limited to patents and printed publications; and (3) the fact that the issues that may be raised during supplemental examination may include issues in addition to those permitted to be raised in *ex parte* reexamination, *e.g.,* issues under 35 U.S.C. 112.

Because a main benefit afforded to patent owners by supplemental examination is to potentially shield patent owners from a finding of unenforceability due to inequitable conduct for the information considered by the Office and subject to a written decision by the Office, the Office estimates that the number of cases annually in which inequitable conduct is pled in the United States district courts represents a reasonable approximation of the number of annual requests for supplemental examination that the Office will receive. Data from the United States district courts reveals that between 2,900 and 3,301 patent cases were filed each year during the period between 2006 and 2010. *See* U.S. Courts, Judicial Business of the United States Courts, *www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2010/appendices/C02ASep10.pdf* (last visited Nov. 11, 2011) (hosting annual reports for 1997 through 2010). Thus, the Office projects that no more than 3,300 (the highest number of yearly filings between 2006 and 2010 rounded to the nearest 100) patent cases are likely to be filed annually. Note that inequitable conduct is pled in approximately 40 percent of the patent cases filed annually in U.S. District Courts. *See* Christian E. Mammen, *Controlling the ''Plague'': Reforming the Doctrine of Inequitable Conduct,* 24 Berkeley Tech. L.J. 1329, 1358–60 (2010) (displaying a chart estimating the steady increase in assertions of the inequitable conduct defense). However, the number of patent cases in which a finding of inequitable conduct is upheld by the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) is only a fraction of a percent. *See id.* The Office also anticipates that the percentage of patent cases in which inequitable conduct is pled and in which a finding of inequitable conduct is upheld by the Federal Circuit will begin to decline due to the May 2011 *en banc* decision by the Federal Circuit in *Therasense, Inc.* v. *Becton, Dickinson, and Co.,* 649 F.3d 1276 (Fed. Cir. 2011).

The Office also anticipates that supplemental examination will lead to a reduction in the number of district court patent infringement cases in which inequitable conduct is pled as a defense. *See* H.R. Rep. No. 112–98, Part 1 at pages 50 and 78 (2011) (the information submitted in a request for supplemental examination cannot later be used to hold the patent unenforceable or invalid on the basis of inequitable conduct during civil litigation). The Office understands that the costs related to inequitable conduct (*e.g.,* discovery related to inequitable conduct) are a significant portion of litigation costs. *See e.g.,* Mammen, *Controlling the ''Plague'': Reforming the Doctrine of Inequitable Conduct,* 24 Berkeley Tech. L.J. at 1347. The Office is specifically interested in receiving comments on litigation cost savings and other benefits the public may expect to realize from implementation of rules on supplemental examination.

Therefore, the Office estimates that it will receive about 1,430 (40 percent of 3,300 plus 110) requests for supplemental examination annually. Assuming that requests for supplemental examination will be filed by small entities in roughly the same percentage that requests for *ex parte* reexamination are currently filed by small entities (36 percent), the Office estimates that about 500 (36 percent of 1,430 (515) rounded to the nearest 100) requests for supplemental examination will be submitted annually by small entities.

4. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rules, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rules will apply to any small entity that files a request for supplemental examination, a request for *ex parte* reexamination, or a petition in an *ex parte* or *inter partes* reexamination proceeding. The proposed rules to implement the supplemental examination provisions of the Leahy-Smith America Invents Act will impose compliance requirements on patent owners who request supplemental examination to consider, reconsider, or correct information believed to be relevant to a patent. The proposed rules will charge a fee to any patent owner who requests supplemental examination, and change the fee applicable to any entity that files a request for *ex parte* reexamination or a petition in an *ex parte* or *inter partes* reexamination proceeding.

All papers in a supplemental examination proceeding must be filed in accordance with the requirements set forth in 37 CFR 1.601 and must be formatted in accordance with the requirements set forth in 37 CFR 1.615. All ''items of information'' submitted as part of the request must meet the requirements of 37 CFR 1.605. The request itself must include the items set forth in 37 CFR 1.610. The proposed rules to implement the supplemental examination provisions of the Leahy-Smith America Invents Act also require: (1) A fee of $5,120.00 for processing and treating a request for supplemental examination; (2) a fee of $15,930.00 for an *ex parte* reexamination ordered as a result of a supplemental examination proceeding; and (3) for processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, a fee of $170.00 for a document of between 21 and 50 sheets, and a fee of $280.00 for each additional 50 sheets or a fraction thereof.

A patent practitioner would have the type of professional skills necessary for preparation of request for supplemental

examination. Office staff with experience and expertise in a wide range of patent prosecution matters as a patent practitioner estimate that preparing and filing a request for supplemental examination will require about 25 patent practitioner hours, costing $8,500 (25 hours at the $340 per hour median rate for attorneys reported in the American Intellectual Property Law Association (AIPLA) Report of the Economic Survey 2011. As discussed previously, a request for supplemental examination is comparable to a request for *ex parte* reexamination, in that both present information to the Office for evaluation as to whether the information raises a substantial new question of patentability). The American Intellectual Property Law Association (AIPLA) Report of the Economic Survey 2011 indicates that the average cost of preparing and filing a request for *ex parte* reexamination (the current Office proceeding most similar to a request for supplemental examination) is $19,000. The Office staff estimate for preparing a supplemental examination is lower than the comparable *ex parte* reexamination cost because a patentee in supplemental examination would simply be preparing a supplemental examination request in compliance with the applicable statutes and regulations with information already at hand, whereas a third party requester in an *ex parte* reexamination (the majority of *ex parte* reexamination requests being by third parties) is not merely preparing an *ex parte* reexamination request in compliance with the applicable statutes and regulations, but is also seeking to convince the Office that the claims in the patent for which reexamination is sought are unpatentable with patents and printed publications that the third party must uncover as part of the process.

The proposed rules to adjust or set fees in *ex parte* reexamination are as follows: (1) $17,550.00 for filing a request for *ex parte* reexamination; (2) $1,930.00 for filing a petition in an *ex parte* or *inter partes* reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d)): and (3) for a refused request for *ex parte* reexamination under 37 CFR 1.510 (this amount is included in the request for *ex parte* reexamination fee, and is the portion not refunded if the request for reexamination is denied). The proposed rules to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings, do not impose any discernible reporting, recordkeeping, or other compliance requirements. The proposed rules to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings, only adjust or establish certain fees (as discussed previously) to more accurately reflect the cost of the process or service.

5. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

This analysis considered significant alternatives such as: (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 and reporting requirements under the rule for such 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 such small entities. *See* 5 U.S.C. 603; *see also* 35 U.S.C. 41(h) (fee reduction for small business concerns not applicable to fees set under 35 U.S.C. 41(d)(2)).

With respect to the proposed rules to implement the supplemental examination provisions of the Leahy-Smith America Invents Act, the Office considered requiring less than, or exempting small entities from, what is currently set forth at proposed 37 CFR 1.601, 1.605, 1.610, and 1.615. Specifically, the Office considered not requiring any or all of, or exempting small entities from, the following content requirement of proposed 37 CFR 1.610: (1) A list of each item of information that is requested to be considered, reconsidered, or corrected, identifying each item of information that was not considered, adequately considered, or correctly considered in the prior examination of the patent, and explaining why consideration or reconsideration of the item of information is being requested or how the item of information it is being corrected; (2) an identification of each aspect of the patent for which supplemental examination is sought, including an identification of the structure, material, or acts in the specification that correspond to each means-plus-function or step-plus-function element, as set forth in 35 U.S.C. 112(f), in any claim to be examined; (3) an identification of each issue raised by each item of information; and (4) a separate, detailed explanation for each identified issue, discussing how each item of information is relevant to each aspect of the patent identified for examination, and how each item of information raises each issue identified for examination, including where an identified issue involves the application of 35 U.S.C. 101 (other than double patenting) or 35 U.S.C. 112, an explanation discussing the support in the specification for each limitation of each claim identified for examination with respect to this issue, and where an identified issue involves the application of 35 U.S.C. 102, 35 U.S.C. 103, or double patenting, an explanation of how each limitation of each claim identified for examination with respect to this issue is met, or is not met, by each item of information.

However, it is in the patent owner's interest to have the supplemental examination proceeding, and any reexamination proceeding ordered pursuant to the supplemental examination request, concluded as soon as possible. *See* 35 U.S.C. 257(c)(2)(B) (stating that the potential benefits to patent owners afforded by 35 U.S.C. 257(c)(1) shall not apply ''unless the supplemental examination, and any reexamination ordered pursuant to the request, are concluded before the date on which [a patent infringement action] is brought''). The information that may be submitted in a supplemental examination is more extensive than the information permitted in an *ex parte* reexamination proceeding, and the issues that may be raised during supplemental examination include issues that are not permitted to be raised in *ex parte* reexamination, *e.g.,* issues under 35 U.S.C. 101 and 112. The Office needs to require this information to promptly resolve a supplemental examination proceeding, and any reexamination proceeding ordered pursuant to the supplemental examination request. Finally, it is in the patent owner's interest to have the supplemental examination request be as complete as possible. With these factors in mind, the Office designed the requirements set forth in the proposed rules to permit: (1) Efficient processing and treatment of each request for supplemental examination within the statutory three-month time period; and (2) completion of any reexamination ordered as a result of the supplemental examination proceeding with special dispatch.

With respect to the proposed rules to adjust the fee for filing a request for *ex parte* reexamination, and to set a fee for petitions filed in reexamination

proceedings, the alternative of not adjusting or setting the fees would have a lesser economic impact on small entities, but would not accomplish the stated objectives of applicable statutes. *See* 35 U.S.C. 41(d)(2) (provides that fees set by the Office recover the estimated average cost to the Office of the processing, services, or materials); *see also* 35 U.S.C. 41(h) (fee reduction for small business concerns not applicable to fees set under 35 U.S.C. 41(d)(2)). In addition, a decision to forego this fee adjustment and fee setting would have a negative impact on Office funding, which in turn would have a negative impact on the ability of the Office to meet the statutory mandate to conduct reexamination proceedings with special dispatch.

A request for supplemental examination is a unique submission (the proposed rule does not involve periodic reporting requirements), thus the establishment of timetables that take into account the resources available to small entities and consolidation of compliance and reporting requirements is inapplicable. In addition, the use of performance rather than design standards is also inapplicable to a request for supplemental examination.

6. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Rules

The Office is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examination and granting patents. Therefore, no other federal, state, or local entity shares jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the Patent Cooperation Treaty (PCT)). Nevertheless, the Office believes that there are no other duplicative or overlapping rules.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996). The rulemaking carries out a statute designed to lessen litigation. See, *e.g.,* H.R. Rep. No. 112–98, Part 1 at pages 50 and 78 (2011) (information submitted in a request for supplemental examination cannot later be used to hold the patent unenforceable or invalid on the basis of inequitable conduct during civil litigation).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This notice proposes changes to the rules of practice that would impose new information collection requirements and impact existing information collection requirements previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0651–0064. Accordingly, the USPTO will submit to the OMB a proposed revision to the information collection requirements under 0651–0064. The proposed revision will be available at the OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Needs and Uses: This information collection is necessary so that a patent owner may file a request for supplemental examination of the patent. The Office will use this information to determine whether the information submitted with the supplemental examination request raises a substantial new question of patentability.

Title of Collection: Patent Reexaminations and Supplemental Examination (formerly Patent Reexaminations).

OMB Control Number: 0651–0064.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the USPTO.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 9,560 responses per year.

Estimated Time per Response: The USPTO estimates that it will take the public from 18 minutes (0.3 hours) to 135 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 235,365 hours per year. In addition, the USPTO anticipates that supplemental examination will produce significant benefits by leading to a reduction in the number of district court patent infringement cases in which inequitable conduct is pled as a defense.

Estimated Total Annual Respondent Cost Burden: $80,024,100 per year.

Estimated Total Annual Non-hour Respondent Cost Burden: $35,283,875 per year in the form of fees and postage costs.

The agency is soliciting comments to: (1) Evaluate whether the proposed information requirement 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; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Please send comments on or before March 26, 2012 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office, or via email at *OIRA_submission@omb.eop.gov*.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons discussed in the preamble, the United States Patent and Trademark Office proposes to amend 37 CFR part 1 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

is amended by revising paragraph (c)(1) and by adding paragraphs (c)(6), (c)(7), and (k) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(c) * * *

(1) For filing a request for *ex parte* reexamination (§ 1.510(a))	$17,750.00

* * * * *

(6) For filing a petition in a reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d)	1,930.00
(7) For a refused request for *ex parte* reexamination under § 1.510 (included in the request for *ex parte* reexamination fee)	4,320.00

* * * * *

(k) In supplemental examination proceedings:

(1) For processing and treating a request for supplemental examination	$5,180.00
(2) For *ex parte* reexamination ordered as a result of a supplemental examination proceeding	16,120.00
(3) For processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, per document:	
(i) Between 21 and 50 sheets	170.00
(ii) For each additional 50 sheets or a fraction thereof	280.00

3. Section 1.26 is amended by revising paragraph (c) to read as follows:

§ 1.26 Refunds.

* * * * *

(c) If the Director decides not to institute a reexamination proceeding in response to a request for reexamination or supplemental examination, fees paid with the request for reexamination or supplemental examination will be refunded or returned in accordance with paragraphs (c)(1) through (c)(3) of this section. The reexamination requester or the patent owner who requested a supplemental examination proceeding, as appropriate, should indicate the form in which any refund should be made (*e.g.,* by check, electronic funds transfer, credit to a deposit account). Generally, refunds will be issued in the form that the original payment was provided.

(1) For an *ex parte* reexamination request, the *ex parte* reexamination filing fee paid by the reexamination requester, less the fee set forth in § 1.20(c)(7), will be refunded to the requester if the Director decides not to institute an *ex parte* reexamination proceeding.

(2) For an *inter partes* reexamination request, a refund of $7,970 will be made to the reexamination requester if the Director decides not to institute an *inter partes* reexamination proceeding.

(3) For a supplemental examination request, the fee for reexamination ordered as a result of supplemental examination, as set forth in § 1.20(k)(2), will be returned to the patent owner who requested the supplemental examination proceeding if the Director decides not to institute a reexamination proceeding.

4. Section 1.550 is amended by adding a new paragraph (i) to read as follows:

§ 1.550 Conduct of ex parte reexamination proceedings.

* * * * *

(i) A petition in an *ex parte* reexamination proceeding must be accompanied by the fee set forth in § 1.20(c)(6), except for petitions under paragraph (c) of this section to extend the period for response by a patent owner, petitions under paragraph (e) of this section to accept a delayed response by a patent owner, petitions under § 1.78 to accept an unintentionally delayed benefit claim, and petitions under § 1.530(l) for correction of inventorship in a reexamination proceeding.

5. Subpart E, consisting of §§ 1.601, 1.605, 1.610, 1.615, 1.620, and 1.625, is added to read as follows:

Subpart E—Supplemental Examination of Patents

Sec.
1.601 Filing of papers in supplemental examination.
1.605 Items of information.
1.610 Content of request for supplemental examination.
1.615 Format of papers filed in a supplemental examination proceeding.
1.620 Conduct of supplemental examination proceeding.
1.625 Conclusion of supplemental examination; publication of supplemental examination certificate; procedure after conclusion.

Subpart E—Supplemental Examination of Patents

§ 1.601 Filing of papers in supplemental examination.

(a) A request for supplemental examination of a patent must be filed by the owner(s) of the entire right, title, and interest in the patent.

(b) The patent owner must establish the entirety of the ownership interest in the patent of paragraph (a) by filing, as part of the request, a submission in compliance with the provisions of § 3.73(b) of this chapter.

(c) Any party other than the patent owner (*i.e.,* any third party) is prohibited from filing papers or otherwise participating in any manner in a supplemental examination proceeding.

§ 1.605 Items of information.

(a) Each request for supplemental examination may request that the Office consider, reconsider, or correct no more than ten items of information believed to be relevant to the patent. More than one request for supplemental examination of the same patent may be filed at any time.

(b) An ''item of information'' includes a document submitted as part of the request that contains information, believed to be relevant to the patent, that the patent owner requests the Office to consider, reconsider, or correct. If the information to be considered, reconsidered, or corrected is not, at least in part, contained within or based on any document submitted as part of the request, the discussion within the body of the request relative to the information will be considered as an item of information.

(c) An item of information must be in writing in accordance with § 1.2. To be considered, any audio or video recording must be submitted in the form of a written transcript.

(d) If one item of information is combined in the request with one or more additional items of information, including instances where it may be necessary to combine items of information in order to raise an issue to be considered, reconsidered, or corrected, each item of information of the combination may be separately counted. Exceptions include the combination of a non-English language document and its translation, and the combination of a document that is over 50 pages in length and its summary pursuant to § 1.610(b)(11).

§ 1.610 Content of request for supplemental examination.

(a) The request must be accompanied by the fee for filing a request for supplemental examination as set forth in § 1.20(k)(1), the fee for reexamination ordered as a result of a supplemental examination proceeding as set forth in § 1.20(k)(2), and any applicable document size fees as set forth in § 1.20(k)(3).

(b) A request for supplemental examination must include each of the elements set forth in paragraphs (b)(1) through (b)(12) of this section.

(1) A cover sheet itemizing each component submitted as part of the request.

(2) A table of contents for the request.

(3) An identification of the number, the date of issue, and the first named inventor of the patent for which supplemental examination is requested.

(4) A list of each item of information that is requested to be considered, reconsidered, or corrected, and the publication date for each item of information, if applicable; and a statement that:

(i) Identifies each item of information that was not considered in the prior examination of the patent, and explains why consideration of the item of information is being requested;

(ii) Identifies each item of information that was not adequately considered in the prior examination of the patent, and explains why reconsideration of the item of information is being requested; and

(iii) Identifies each item of information that was incorrect in the prior examination of the patent, and explains how it is being corrected.

(5) A list identifying any other prior or concurrent post patent Office proceedings involving the patent for which supplemental examination is being requested, including an identification of the type of proceeding (*e.g., ex parte* or *inter partes* reexamination, reissue, supplemental examination, post-grant review, or *inter partes* review), the identifying number of any such proceeding (*e.g.,* a control number or reissue application number), and the filing date of any such proceeding.

(6) An identification of each aspect of the patent for which supplemental examination is sought, including an identification of the structure, material, or acts in the specification that correspond to each means-plus-function or step-plus-function element, as set forth in 35 U.S.C. 112(f), in any claim to be examined.

(7) An identification of each issue raised by each item of information.

(8) A separate, detailed explanation for each identified issue, discussing how each item of information is relevant to each aspect of the patent identified for examination, and how each item of information raises each issue identified for examination, including:

(i) Where an identified issue involves the application of 35 U.S.C. 101 (other

than double patenting) or 35 U.S.C. 112, an explanation discussing the support in the specification for each limitation of each claim identified for examination with respect to this issue; and

(ii) Where an identified issue involves the application of 35 U.S.C. 102, 35 U.S.C. 103, or double patenting, an explanation of how each limitation of each claim identified for examination with respect to this issue is met, or is not met, by each item of information. The detailed explanation may also include an explanation of how the claims distinguish over the items of information.

(9) A copy of the patent for which supplemental examination is requested and a copy of any disclaimer, certificate of correction, certificate of extension, supplemental examination certificate, post grant review certificate, *inter partes* review certificate, or reexamination certificate issued for the patent.

(10) A copy of each item of information listed in paragraph (b)(3) of this section, accompanied by a written English translation of all of the necessary and pertinent parts of any non-English language document. Items of information that form part of the discussion within the body of the request as specified in § 1.605(b), and copies of U.S. patents and U.S. patent application publications, are not required to be submitted.

(11) A summary of the relevant portions of any submitted document, other than the request, that is over 50 pages in length. The summary must include citations to the particular pages containing the relevant portions.

(12) A submission by the patent owner in compliance with § 3.73(b) of this chapter establishing the entirety of the ownership in the patent requested to be examined as set forth in § 1.601(b).

(c) The request may also include an explanation of why each item of information submitted with the request does or does not raise a substantial new question of patentability.

(d) The filing date of a request for supplemental examination will not be granted if the request is not in compliance with § 1.605, § 1.615, and this section. A defective request may receive a filing date if the defects are limited to the omission of one or more of the requirements set forth in paragraph (b)(1) or (b)(2) of this section, subject to the discretion of the Office.

(e) If the Office determines that the request, as originally submitted, does not meet the requirements of paragraph (d) of this section to be entitled to a filing date, the patent owner will be so notified and will be given an opportunity to complete the request within a specified time. If the patent owner does not timely comply with the notice, the request for supplemental examination will not be granted a filing date and the fee for reexamination as set forth in § 1.20(k)(2) will be refunded. If the patent owner timely files a corrected request in response to the notice that properly addresses all of the defects set forth in the notice and that otherwise complies with all of the requirements of §§ 1.605, 1.615 and of this section, the filing date of the supplemental examination request will be the receipt date of the corrected request.

§ 1.615 Format of papers filed in a supplemental examination proceeding.

(a) All papers submitted in a supplemental examination proceeding must be formatted in accordance with § 1.52, including the request for supplemental examination and any other documents generated by the patent owner/requester, such as translations of non-English language documents, transcripts of audio or video recordings, affidavits or declarations, and summaries of documents over 50 pages in length pursuant to § 1.610(b)(11). Exceptions include tables of contents, curriculum vitae, claim charts, court documents, third-party-generated affidavits or declarations, and any other document generated by a third party, including patents, patent application publications, and non-patent literature. All documents must be presented in a form having sufficient clarity and contrast between the paper and the text or image to permit the direct reproduction of readily legible copies by use of digital imaging and optical character recognition.

(b) Court documents and non-patent literature may be redacted, but must otherwise be identical both in content and in format to the original documents, and, if a court document, to the document submitted in court, and must not otherwise be reduced in size or modified, particularly in terms of font type, font size, line spacing, and margins. Patents, patent application publications, and third-party-generated affidavits or declarations must not be reduced in size or otherwise modified in the manner described in this paragraph.

§ 1.620 Conduct of supplemental examination proceeding.

(a) Within three months following the filing date of a request for supplemental examination, the Office will determine whether a substantial new question of patentability affecting any claim of the patent is raised by any of the items of information presented in the request. The determination will generally be limited to a review of the issues identified in the request as applied to the identified aspects of the patent. The determination will be based on the claims in effect at the time of the determination and will become a part of the official record of the patent.

(b) The Office may hold in abeyance action on any petition or other paper filed in a supplemental examination proceeding until after the proceeding is concluded by the electronic issuance of the supplemental examination certificate as set forth in § 1.625.

(c) If an unauthorized or otherwise improper paper is filed in a supplemental examination proceeding, it will not be entered into the official file or considered, or if inadvertently entered, it will be expunged.

(d) The patent owner must, as soon as possible upon the discovery of any other prior or concurrent post patent Office proceeding involving the patent for which the current supplemental examination is requested, file a paper limited to notice of the post patent Office proceeding, if such notice has not been previously provided with the request. The notice shall be limited to an identification of the post patent proceeding, including the type (*e.g., ex parte* or *inter partes* reexamination, reissue, supplemental examination, post-grant review, or *inter partes* review), the identifying number of any such proceeding (*e.g.,* a control number or reissue application number), and the filing date of any such proceeding, without any discussion of the issues of the current supplemental examination proceeding or of the identified post patent Office proceeding(s).

(e) Interviews are prohibited in a supplemental examination proceeding.

(f) No amendment to any aspect of the patent may be filed in a supplemental examination proceeding.

(g) If the Office becomes aware, during the course of supplemental examination or of any reexamination ordered under 35 U.S.C. 257, of a material fraud on the Office involving the patent requested to be examined, the supplemental examination proceeding or any reexamination proceeding ordered under 35 U.S.C. 257 will continue, and the matter will be referred to the U.S. Attorney General in accordance with 35 U.S.C. 257(e).

§ 1.625 Conclusion of supplemental examination; publication of supplemental examination certificate; procedure after conclusion.

(a) A supplemental examination proceeding will conclude when the supplemental examination certificate is electronically issued. The supplemental

examination certificate will indicate the result of the determination whether any of the items of information presented in the request raised a substantial new question of patentability.

(b) If the supplemental examination certificate states that a substantial new question of patentability is raised by one or more items of information in the request,

ex parte reexamination of the patent will be ordered under 35 U.S.C. 257. Upon the conclusion of the *ex parte* reexamination proceeding, an *ex parte* reexamination certificate, which will include a statement specifying that *ex parte* reexamination was ordered under 35 U.S.C. 257, will be published. The electronically issued supplemental examination certificate will remain as part of the public record of the patent.

(c) If the supplemental examination certificate indicates that no substantial new question of patentability is raised by any of the items of information in the request, and *ex parte* reexamination is not ordered under 35 U.S.C. 257, the electronically issued supplemental examination certificate will be published in due course. The reexamination fee for supplemental examination, as set forth in § 1.20(k)(2), will be refunded in accordance with § 1.26(c).

(d) Any *ex parte* reexamination ordered under 35 U.S.C. 257 will be conducted in accordance with §§ 1.530 through 1.570, which govern *ex parte* reexamination, except that:

(1) The patent owner will not have the right to file a statement pursuant to § 1.530, and the order will not set a time period within which to file such a statement;

(2) Reexamination of any aspect of the patent may be conducted on the basis of any item of information as set forth in § 1.605, and is not limited to patents and printed publications or to subject matter that has been added or deleted during the reexamination proceeding, notwithstanding § 1.552(a);

(3) Issues in addition to those raised by patents and printed publications, and by subject matter added or deleted during a reexamination proceeding, may be considered and resolved, notwithstanding § 1.552(c); and

(4) Information material to patentability will be defined by § 1.56(b), notwithstanding § 1.555(b).

6. Section 1.937 is amended by adding a new paragraph (d) to read as follows:

§ 1.937 Conduct of inter partes reexamination.

* * * * *

(d) A petition in an *inter partes* reexamination proceeding must be accompanied by the fee set forth in § 1.20(c)(6), except for petitions under § 1.956 to extend the period for response by a patent owner, petitions under § 1.958 to accept a delayed response by a patent owner, petitions under § 1.78 to accept an unintentionally delayed benefit claim, and petitions under § 1.530(l) for correction of inventorship in a reexamination proceeding.

Dated: January 19, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–1480 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0037; FRL–9622–8]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Minnesota State Implementation Plan addressing regional haze for the first implementation period. Minnesota submitted its regional haze plan on December 30, 2009. A supplemental submission was made on January 5, 2012. The Minnesota regional haze plan addresses Clean Air Act (CAA) and Regional Haze Rule (RHR) requirements to remedy any existing and prevent future anthropogenic visibility impairment at mandatory Class I areas. We are proposing fully to approve the Minnesota regional haze plan if Minnesota submits its proposed Best Available Retrofit Technology (BART) emission limits for taconite facilities in fully adopted form prior to our final action under this proposal, or to conditionally approve the plan if Minnesota has not done so.

DATES: Comments must be received on or before February 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0037, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2010–0037. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities located across a broad geographic area and that emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic particles, elemental carbon, and soil dust) and its precursors—sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases ammonia (NH_3), and volatile organic compound (VOCs). Fine particle precursors react in the atmosphere to form fine particulate matter. Aerosol $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity and distance one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range, the distance at which an object is barely discernable, in many Class I areas [1] in the western United States is 100–150 kilometers. That is about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In the Eastern and Midwestern Class I areas of the United States, the average visual range is generally less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of the Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a Federal Land Manager. 42 U.S.C. 7602(i). When we use the term ''Class I area,'' we mean a ''mandatory Class I Federal area.''

B. Requirements of the Clean Air Act (CAA) and EPA's RHR

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources known as, ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze, the RHR, on July 1, 1999 (64 FR 35713). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III. The requirement to submit a regional haze state implementation plan (SIP) applies to all 50 states, the District of Columbia, and the Virgin Islands.[2]

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, effectively addressing the problem of visibility impairment in Class I areas

[2] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

means that states need to develop coordinated strategies that take into account the effect of emissions from one jurisdiction on the air quality in another state.

EPA has encouraged the states and tribes to address visibility impairment from a regional perspective because the pollutants that lead to regional haze can originate from sources located across broad geographic areas. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country and then pursued the development of regional strategies to reduce $PM_{2.5}$ emissions and other pollutants leading to regional haze.

The RPO for Minnesota is the Central Regional Air Planning Association (CENRAP). CENRAP's membership includes the states of Arkansas, Iowa, Kansas, Louisiana, Minnesota, Missouri, Nebraska, Oklahoma, and Texas, along with tribes and federal land management agencies (FLMs).

Minnesota also worked with the Midwest RPO (MRPO) on technical analyses of regional haze and visibility in the Midwest. The MRPO member states are Illinois, Indiana, Michigan, Ohio, and Wisconsin.

D. The Relationship of the Clean Air Interstate Rule and the Transport Rule to Regional Haze Requirements

The Clean Air Interstate Rule (CAIR) required some states to reduce emissions of SO_2 and NO_X that contribute to violations of the 1997 National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and 8-hour ozone. 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for SO_2 and NO_X. A 2006 EPA determination (71 FR 60612, October 13, 2006) establishes that states opting to participate in the CAIR program need not require BART for SO_2 and NO_X at BART-eligible electric generating units (EGUs). Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for its subject EGUs.

On July 11, 2008, the D.C. Circuit issued its decision to vacate and remand both CAIR and the associated CAIR Federal Implementation Plans (FIPs) in their entirety. *See North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008). However, the Court issued an order on December 23, 2008, remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs in response to EPA's petition for rehearing. The Court held that, among other things, EPA had not properly addressed possible errors in analysis supporting the inclusion of Minnesota in CAIR for $PM_{2.5}$. The Court left the EPA CAIR rule and CAIR SIPs and FIPs in place until EPA replaces it with a rule consistent with the court's opinion. *See North Carolina* v. *EPA,* 550 F.3d at 1178. In a November 3, 2009 (74 FR 56721) final rule, EPA administratively stayed the effectiveness of CAIR and the CAIR FIP with respect to Minnesota and sources in Minnesota only.

EPA subsequently promulgated the Transport Rule, also known as the Cross-State Air Pollution Rule, to replace CAIR. The final Transport Rule was published on August 8, 2011 (76 FR 48208). Minnesota is covered by the Transport Rule.

In the Transport Rule, EPA noted that it had not conducted a technical analysis at that time to determine whether compliance with the Transport Rule would satisfy the requirements of the RHR addressing alternatives to BART. EPA has since conducted such an analysis and proposed on December 30, 2011, that compliance with the Transport Rule will provide for greater reasonable progress toward improving visibility than source-specific BART controls for EGUs located in those states covered by the Transport Rule. 76 FR 82219. On that same day, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

On January 5, 2012, Minnesota submitted a draft supplement to its regional haze plan, including a statement that it wishes to rely on the Transport Rule to satisfy BART requirements for SO_2 and NO_X for EGUs.

III. What are the requirements for regional haze SIPs?

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas, the reasonable progress goal (RPG). Section 169A of the CAA and EPA's implementing regulations require states to establish LTS for making reasonable progress toward meeting the RPG. Plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require those sources to install BART reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

A. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric or unit for expressing visibility impairment. This visibility metric expresses uniform proportional changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciview is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[3]

The deciview is used in expressing RPGs, defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution. The national goal is a return to natural conditions such that anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437) and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP is submitted and at the progress review every five years, midway through each 10-year implementation period. The RHR requires states with Class I areas (Class I states) to determine the degree of impairment in deciviews for the average of the 20 percent (%) least impaired (best) and 20% most impaired (worst) visibility days over a specified time period at each of its Class I areas. Each

[3] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

state must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, *EPA's Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIP, due December 17, 2007, the ''baseline visibility conditions'' are the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20% best days and 20% worst days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while comparisons of future conditions against baseline conditions will indicate the amount of progress made. In general, the 2000 to 2004 baseline period is considered the time from which improvement in visibility is measured.

B. Determination of RPGs

The vehicle for ensuring continuing progress toward achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two distinct RPGs, one for the best days and one for the worst days for every Class I area for each approximately 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting RPGs, a state with a mandatory Class I area (Class I state) must provide for an improvement in visibility for the worst days over the approximately 10-year period of the SIP and ensure no degradation in visibility for the best days.

Class I states have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. The states must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in *EPA's Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (''uniform rate of progress'' or ''glide path'') and the emissions reduction needed to achieve that rate of progress over the approximately 10-year period of the SIP. In setting RPGs, each Class I state must also consult with potentially contributing states, i.e., those states that may affect visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

C. BART

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain older large stationary sources to address visibility impacts from these sources. Specifically, CAA section 169A(b)(2)(A) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress toward the natural visibility goal including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7). The state can require source-specific BART controls, but it also has the flexibility to adopt an alternative such as a trading program only if the alternate provides greater progress toward improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (BART Guidelines) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. A state must use the approach in the BART Guidelines in making a BART determination for a fossil fuel-fired EGU with total generating capacity in excess of 750 megawatts. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 emissions impair visibility in Class I areas.

States may select an exemption threshold value for their BART modeling under the BART Guidelines, below which a BART-eligible source may be considered to have a small enough contribution to visibility impairment in any Class I area to warrant being exempted from the BART requirement. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. The exemption threshold set by the state should not be higher than 0.5 dv. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual source's impact.

The state must identify potential BART sources in its SIP, described as ''BART-eligible sources'' in the RHR, and document its BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires the state to consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may

reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. The BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the state's regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

The RHR also allows states to implement an alternative program in lieu of BART if desired so long as the alternative program can be demonstrated to achieve greater progress toward the national visibility goal than implementing BART controls. EPA made such a demonstration for CAIR under regulations issued in 2005 revising the regional haze program. 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR trading program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). CAIR is not applicable to emissions of PM, so states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

As described above in section II, the DC Circuit found CAIR to be inconsistent with the requirements of the CAA. The rule was remanded to EPA but left in place until the Agency replaced it. EPA replaced CAIR with the Transport Rule in August 2011.

On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would be obtained by implementing BART for SO_2 and NO_X for BART-subject EGUs in the area subject to the Transport Rule *76 FR 82219.* Based on that proposed finding, EPA also proposed to revise the RHR to allow states to meet the requirements of an alternative program in lieu of BART by participation in the trading programs under the Transport Rule. The Transport Rule is not applicable to emissions of PM, so states would still be required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. EPA has not taken final action on that rule.

D. LTS

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs for all Class I areas within or affected by emissions from the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to address interstate visibility issues sufficiently.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS. The seven factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

E. Coordinating Regional Haze and RAVI LTS

EPA revised 40 CFR 51.306(c), which is a part of the RHR, regarding the LTS for RAVI. The RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze on or before this date. It must also submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs and periodic progress reports evaluating progress towards RPGs must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must be submitted to EPA as a SIP revision and report on both RAVI and regional haze impairment. In cases involving sources newly certified as RAVI sources, 40 CFR 51.306(c) provides for the State to revise its plan as appropriate within 3 years of receipt of the RAVI certification.

F. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network, meaning that the state reviews and uses monitoring data from the network. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state

with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;

- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, to be submitted in electronic format, if available;
- A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year with available data, and future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018 with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

G. Consultation With States and FLMs

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for in person consultation at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Minnesota's regional haze plan?

Minnesota submitted its regional haze plan on December 30, 2009, which included revisions to the Minnesota SIP to address regional haze. Minnesota also supplemented its regional haze plan by submitting additional material on January 5, 2012.

A. Class I Areas

States are required to address regional haze affecting Class I areas within a state and in Class I areas outside the state that may be affected by the state's emissions. 40 CFR 51.308(d). Minnesota has two Class I areas, Boundary Waters Canoe Wilderness Area (Boundary Waters) and Voyageurs National Park (Voyageurs), within the state. Minnesota is responsible for developing a regional haze plan that addresses these Class I areas and for consulting with states that affect its areas.

Minnesota reviewed technical analyses conducted by CENRAP and other RPOs to determine what Class I areas outside the state are affected by Minnesota emission sources. Minnesota's modeling shows that its emissions contribute to visibility impairment at Isle Royale National Park in Michigan. Minnesota emission sources were also found by the CENRAP analysis to contribute to visibility impairment at Wichita Mountains Wildlife Refuge in Oklahoma. Minnesota has met the requirement to identify affected Class I areas.

B. Baseline, Current, and Natural Conditions

The RHR requires Class I states to calculate the baseline, current, and natural conditions for their Class I areas.

Natural background visibility is estimated by calculating the expected light extinction using estimates of natural concentrations of pollutants adjusted by an estimate of humidity. The IMPROVE algorithm is used to make this calculation. EPA allows states to use an alternative approach to calculating natural conditions. One alternative approach is to use the refined IMPROVE algorithm, which is what Minnesota chose to do. Minnesota determined that natural visibility conditions for Boundary Waters are best represented by an average of 11.6 dv for the 20% most impaired days and 3.4 dv for the 20% least impaired days. Natural conditions for Voyageurs were predicted to be 12.2 dv on the most impaired days and 4.3 dv on the least impaired days.

The baseline visibility conditions are the same as the current conditions for this initial regional haze implementation period. Minnesota used IMPROVE monitoring data to calculate the baseline visibility conditions at its Class I areas. Data from 2000–2004 was used to calculate the impairment on the 20% best and 20% worst visibility days at Boundary Waters and Voyageurs. The refined IMPROVE equation is used to calculate the baseline conditions.

Minnesota calculated the baseline visibility impairment at Boundary Waters as 19.9 dv on the 20% most impaired days and 6.4 dv on the 20% least impaired days. The state found the baseline visibility impairment at Voyageurs to be 19.5 dv on the 20% worst visibility days and 7.1 dv on the cleanest 20% of days.

Minnesota compared the baseline or current to the natural visibility impairment. This determines the visibility improvement needed over the 60-year period (2004 to 2064) to reach natural conditions. An annual rate can simply be calculated by dividing the needed improvement by 60 years. The state can use the annual visibility improvement rate for the most impaired days to set its uniform rate of progress (URP) targets for each implementation period.

For Boundary Waters, the difference between the baseline, 19.9 dv, and the natural, 11.6 dv, on the 20% most impaired days is 8.3 dv, which yields an annual rate of 0.14 dv. The difference on the 20% least impaired days between the 6.4 dv baseline and 3.4 dv natural conditions is 3.0 dv. The differences at Voyageurs are 7.3 dv on the most impaired days (19.5–12.2 dv) and 2.8 dv (7.1–4.3 dv) on the least impaired days. The annual rate of visibility improvement needed for the 20% most impaired days is 0.12 dv per year to achieve the URP. Minnesota then calculated the 2018 URP goals of 17.9 dv for Boundary Waters and 17.8 dv for Voyageurs. These goals for the 20% most impaired days were calculated by multiplying the annual rate of improvement by the 14 years since the 2004 baseline. There is to be no degradation of the visibility on 20% best days, so no calculation is needed as the 2018 goals match the baseline. EPA's Reasonable Progress Guidance states that the URP is not a presumptive target for the RPG. Class I states can set the RPG at the URP or it can set the RPG at greater or less visibility impairment.

C. RPGs

Minnesota teamed with MRPO and Michigan to establish RPGs for the four Northern Class I areas including

Boundary Waters and Voyageurs. The Northern Class I areas consultation group worked together to determine the RPGs by first identifying and prioritizing sources that contribute to the worst visibility days and to establish the relative visibility impairment affects. The group determined that the priority emission sources are SO_2 point sources, NO_X from both point and mobile sources, and ammonia from agricultural operations. Minnesota identified regional SO_2 emissions from EGUs as a key contributor to visibility impairment in Boundary Waters and Voyageurs. Minnesota also identified NO_X and SO_2 emissions from sources in the six counties of Northeastern Minnesota as important contributors. The counties of Carlton, Cook, Itasca, Koochiching, Lake, and Saint Louis comprise the Northeast Minnesota area.

The second step of the process was to identify control options for the priority sources. The group identified existing control measures including CAIR, BART, Maximum Achievable Control Technology standards, on-road mobile source programs, and non-road mobile source programs. MRPO examined different potential control scenarios, two control levels for EGUs and two control levels for industrial, commercial, and institutional (ICI) boilers. Minnesota determined that most of its priority sources, including EGUs and indurating furnaces at taconite facilities, are subject to BART. Other priority sources will be subject to emissions control to comply with the Northeast Minnesota plan (see section IV.E).

The third step of the process is to assess existing control programs. In its initial plan development, Minnesota considered reductions from CAIR. Subsequently, CAIR was suspended in Minnesota, but then EPA promulgated the Transport Rule to regulate EGU emissions in Minnesota again. Therefore, Minnesota's plan continues to include EGU emission reductions that once again may be considered mandated by a regional trading program. The state is also accounting for emission reductions from voluntary projects being undertaken by EGUs due to Minnesota statue 216B.1692, which allows the recovery of the costs of environmental projects. Minnesota further considered the emission reductions from implementing BART controls on its sources and sources in other states. Minnesota took into account the reductions anticipated from other federal controls such as Tier II mobile source standards, heavy-duty diesel engine standards, low sulfur fuel, and non-road mobile source control programs.

The fourth step is to determine which control options may be reasonable. The Northern Class I areas group further considered the MRPO EGU scenario with 0.15 lb SO_2/MMBTU and 0.10 lb NO_X/MMBTU limits by 2013 and the ICI boiler option with a 40% reduction in SO_2 emissions and a 60% reduction in NO_X emissions by 2013. Minnesota used a CENRAP emissions-to-distance analysis. CENRAP took source emissions in tons divided by the distance to an affected Class I area in kilometers. When this ratio was greater than or equal to five, potential controls were evaluated. This analysis identified some Minnesota sources with potential for cost effective NO_X reductions. However, Minnesota noted that the identified sources are already implementing controls.

The final step of the process to determine the RPGs was to compare the control strategies to the URP. Minnesota included all control measures believed to be reasonable and compared the resulting visibility improvement to the URP. Minnesota set the RPGs for Boundary Waters at 18.6 dv for the worst 20% of days and 6.4 dv for the best 20% of days in 2018. This annual 0.09 dv improvement rate would lead to achieving natural conditions on the worst 20% of days in 2093. The 2018 RPG for Boundary Waters provides less improvement than the linear progress benchmark of 17.9 dv. Minnesota determined that the RPGs for Voyageurs are 18.9 dv for the worst 20% of days and 7.1 dv for the best 20% of days in 2018. Projecting this 0.04 dv per year improvement into the future yields Voyageurs reaching natural conditions on the worst 20% of days in 2177. As was the case for Boundary Waters, the 2018 RPG for Voyageurs provides less improvement than the linear progress benchmark of 17.8 dv. Minnesota considers the RPGs to be the result of the minimally acceptable visibility improvement. Minnesota detailed potential controls in Chapter 10 of its regional haze plan.

Minnesota consulted with other states to determine which Class I areas are impaired by emissions from its sources. The consultation also allowed Minnesota to determine that in addition to contributions from its own sources, emissions from sources in Wisconsin, Illinois, Iowa, Missouri, and North Dakota contribute to visibility impairment at Minnesota's Class I areas, Boundary Waters and Voyageurs. Minnesota identified the contributing states from MPRO's 2018 PSAT analysis. Other analyses from CENRAP and MRPO support the contribution determination. The pollutants and sources affecting Boundary Waters and Voyageurs are detailed in Chapter 10 of the Minnesota regional haze plan.

Minnesota consulted with the FLMs during the development of its regional haze plan. The FLMs participated in CENRAP and on Northern Class I areas group calls, which allowed for FLM comment about technical issues and control strategies. Minnesota also consulted directly with the FLMs during plan development about its visibility impairment at Class I areas assessment, setting the RPGs, and the development of strategies to address visibility impairment.

The FLMs participated at stakeholder meetings in January and May 2007. Consultation with the FLMs continued as Minnesota prepared its BART determinations. Further consultation occurred in the summer of 2007 while Minnesota cultivated a strategy to address visibility impairment resulting from emission sources in close proximity to the Class I areas. A draft of the regional haze plan was discussed at a September 20 and 21, 2007, meeting at Voyageurs. Minnesota sent the FLMs its regional haze plan on February 4, 2008. The public hearing on the regional haze plan was held on April 10, 2008. Thus, the state met the provisions of the RHR to provide the FLMs at least 60 days to review the plan prior to the public hearing. Minnesota will continue to consult with the FLMs on regional haze in the future.

Minnesota actively participated in CENRAP meetings and conference calls. Minnesota also participated in some MRPO meetings and conference calls even though it is not a MRPO member. Beyond the technical analyses produced by the RPOs, Minnesota was able to consult with states and tribes throughout the region because of its RPO participation. Minnesota and Michigan coordinated the Northern Class I areas conference calls, which allowed the states to consult with the states contributing to visibility impairment at Boundary Waters, Voyageurs, and two Class I areas in Michigan's Upper Peninsula. Illinois, Indiana, Iowa, Missouri, and North Dakota participated on the Northern Class I areas calls and thus, consulted with Minnesota. Michigan and Minnesota also consulted with each other. The Northern Class I areas consultation group also included a number of other governmental entities. Participating tribes included the Leech Lake Band of Ojibwe, Mille Lacs Band of Ojibwe, Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band

of Chippewa, Upper Sioux, Lower Sioux, and Huron Potawatomi. EPA, National Park Service, and Forest Service also participated in the consultation calls along the Ontario Ministry of the Environment. The Northern Class I areas consultation group began in 2004 by working on air quality planning. Later the group discussed the SIP requirements of the regional haze program including sharing technical information on regular conference calls from July 2006 to February 2008. In September 2007, Minnesota sent a letter to the states participating in the Northern Class I areas group as these states contribute to visibility impairment in Boundary Waters or Voyageurs. This letter formally acknowledged the consultation occurring in the group. Details of consultations including the Northern Class I areas process are included in Chapter 3 of the Minnesota regional haze plan.

In addition to demonstrating the effect of emissions from other states on its Class I areas, Minnesota must also show that it will obtain its share of emission reductions from its sources. Thus, Minnesota's emission reduction obligations will allow the affected Class I areas to meet the RPGs. Minnesota performed technical analyses and modeling to analyze its contribution to visibility impairment. The state concluded that sulfates, nitrates, and organic carbon are the main contributors to visibility impairment. Minnesota thus decided to focus emission reduction efforts on SO_2 and NO_X, as it found the organic particles tend to come from natural sources such as wildfires in the Upper Midwest. Minnesota considered the emission reductions expected from existing, voluntary projects, and additional control measures that will improve visibility through 2018, when the first RPGs apply. The existing and voluntary control measures considered are similar to what the state considered in setting its RPGs. The additional controls measures were considered by the Northern Class I areas group and are reasonably likely to be implemented. Minnesota believes that the control measures it considered are reasonable and that it will achieve its share of emission reductions to attain the RPGs at affected Class I areas. This includes obtaining its share of emission reduction for Boundary Waters and Voyageurs in addition to Class I areas outside the state. EPA concludes that Minnesota is implementing a reasonable progress plan that includes the measures that meet the criteria as reasonable measures.

D. BART

Minnesota conducted a BART analysis using the criteria in the BART Guidance at 40 CFR 51.308(e) and Appendix Y to identify all of the BART-eligible sources, assess whether the BART-eligible sources are subject to BART, and determine the BART controls. Minnesota initially identified 25 facilities with BART-eligible sources consisting of 11 EGUs, 2 petroleum refineries, 6 taconite ore processing plants, 2 sugar-processing facilities, 2 kraft pulp mills, an iron and steel mill, and a secondary metal production facility. Minnesota performed source-specific analyses with the CALPUFF model to determine which units are subject to BART. The state selected a 98th percentile 0.5 dv contribution threshold, consistent with EPA's suggested threshold, because no conglomeration of sources existed to warrant a more stringent threshold and because Minnesota concluded that 0.5 dv was an appropriate threshold for defining significant impact for BART purposes. Minnesota found that 11 facilities have units subject to BART. Five EGUs and six taconite ore processing facilities have subject to BART units. The EGUs with subject to BART units include Minnesota Power Taconite Harbor and Boswell facilities, Northshore Mining's Silver Bay, Rochester Public Utilities' Silver Lake, and Xcel Energy's Sherburne County (Sherco). The taconite ore processing facilities with subject to BART units are US Steel-Keewatin Taconite, Hibbing Taconite Company, US Steel-Minntac, United Taconite, ArcelorMittal, and Northshore Mining's Silver Bay.

Next, Minnesota determined the appropriate BART emission limits using the five-step BART determination process. The taconite facilities are unique, as only eight facilities exist nationally with six in northern Minnesota and two in Michigan's Upper Peninsula. The taconite plants are over 30 years old. The lack of new plants or retrofit projects gave Minnesota little knowledge of what emission limits are feasible and the cost effectiveness of potential control technologies, particularly for NO_X control.

Minnesota determined BART for NO_X emissions from taconite pellet furnaces as employing good combustion practices with process modifications such as low-NO_X burners, ported kilns, and fuel-efficient furnace design improvements. Minnesota required emission monitoring at the taconite facilities to learn what NO_X emission rates can be achieved by these controls. Now, the state has used that data to set the NO_X emission rates for its taconite facilities.

The facility specific BART determinations resulted in Minnesota selecting the following NO_X emission limits as satisfying BART. All NO_X emission limits for the taconite facilities are based on a 30-day rolling average. The ArcelorMittal indurating furnace will use low-NO_X burners and a furnace energy-efficiency project to reduce emissions to 1018 lb/hr. For Hibbing Taconite, the furnace energy-efficiency projects completed in 2005 and 2006 to produce a NO_X BART limit of 447.4 lb/hr on the Line 1 Pelletizing Furnace, 571.7 lb/hr on the Line 2 furnace, and 338.3 lb/hr on the Line 3 furnace. Keewatin Taconite's Phase II Pelletizing Furnace will use fuel blending along with the existing controls to reduce NO_X emissions to 12.35 tons per day. US Steel-Minntac will use fuel blending on its pellet furnace Line 3 to achieve an emissions rate of 7.85 tons per day. Minntac will use low-NO_X burners and fuel blending on Lines 4, 5, 6, and 7. The resulting NO_X emission limits are 9.85 tons per day on Line 4, 9.46 tons per day on Line 5, 7.14 tons per day on Line 6, and 5.51 tons per day on Line 7. Northshore Silver Bay requires good combustion practices to limit NO_X emissions from Furnace 11 and Furnace 12 to 115.5 lb/hr for each furnace, while Process Boilers #1 and #2 are limited to 0.17 lb/MMBTU. Finally, United Taconite is required to operate with good combustion practices to obtain a NO_X emission limit of 4.5 tons per day on Line 1 and 10.1 tons per day on Line 2.

Minnesota determined that BART for PM emissions is complying with the taconite MACT for covered units. The taconite MACT establishes a PM_{10} emission limit of 0.01 grains per dry standard cubic foot for the pellet furnaces at all six taconite facilities. The taconite facilities already have PM controls to comply with the MACT standards. Northshore Silver Bay has wet-wall electrostatic precipitators, while the other five facilities operate wet scrubbers for PM control. Minnesota concluded that additional PM control would result in nominal visibility improvement, so complying with the taconite MACT represents BART control for PM.

Minnesota determined that the wet scrubbers installed for PM control could be used to provide BART control of SO_2 emissions at most of the taconite facilities, too. As with NO_X emission control, Minnesota found it necessary to monitor SO_2 emissions to be able to select the appropriate SO_2 emission limits for some of the facilities.

Minnesota set the SO_2 emission limit for the indurating furnace at ArcelorMittal at 0.165 lb/long ton (LT) of taconite pellets fired on a rolling 30-day average when combusting natural gas. The SO_2 emission limits for Hibbing Taconite's Line 1, 2, and 3 Pelletizing Furnaces each were set at 0.207 lb/LT as a 30-day rolling average. Minnesota determined that Keewatin Taconite is obtaining adequate SO_2 control with its wet scrubbers. Thus, after reviewing the monitoring data, the State set an SO_2 emission limit at 2.71 tons per day on a 30-day rolling average for the facility's Phase II Pelletizing Furnace. US Steel-Minntac operates five agglomerator lines—Lines 3 to 7. Minnesota set the SO_2 BART emission limit for Line 3 at 1.28 tons per day, Line 4 at 1.10 tons per day, and Line 5 at 1.10 tons per day. Lines 6 and 7 operate with ported kilns and combust coal in making fluxed pellets, so Minnesota needed additional monitoring data to set the SO_2 emission limits for Lines 6 and 7 at 1.47 and 1.61 tons per day respectively. The SO_2 emission limits for US Steel-Minntac are for a rolling 30-day average. For the indurating furnaces at Northshore Silver Bay, Minnesota set a BART limit for SO_2 emissions at 0.0651 lb/LT on a 30-day rolling average. United Taconite has two indurating furnaces, Lines 1 and 2. Minnesota determined that optimizing the wet scrubber for SO_2 removal is BART control for Line 1 and set the SO_2 emission limit at 106.3 tons as a 30-day rolling sum. Minnesota determined the SO_2 emission limit for Line 2 is 197 tons as a 30-day rolling sum. United Taconite can meet the BART emission limit by either modifying its fuel blends, through operation of additional control equipment, or a combination of additional control with a lower sulfur fuel blend. Line 2 currently uses a blend of coal, petroleum coke, and natural gas. The BART analysis showed the installation and operation of a polishing scrubber as a viable BART control.

Minnesota has provided some of the preceding BART emission limits on January 5, 2012 in proposed Administrative Orders. EPA cannot approve BART emission limits that are not federally enforceable. Thus, EPA cannot approve all of Minnesota's BART emission limits until the limits are final in an enforceable form. Nevertheless, Minnesota has requested that EPA conduct ''parallel processing,'' in which EPA proposes the action it would take were the State to adopt its draft administrative orders in final form. Accordingly, EPA is proposing that, provided Minnesota submits all of its BART emission limits in final Administrative Orders by the time EPA conducts final rulemaking, EPA will approve these administrative orders as satisfying BART for these sources.

Minnesota initially did not perform BART determinations for the five subject to BART EGUs. This was because Minnesota was in the CAIR region and the state planned to meet its BART obligations through its participation in CAIR. CAIR was expected to control NO_X and SO_2 emissions from power plants, so Minnesota assessed the visibility impairment from PM for the subject to BART EGUs. Minnesota modeled each EGU and found the visibility impairment to be minor with the maximum impact of 0.16 dv from Northshore Silver Bay. Minnesota did not set PM emission limits for BART given this minor impact on visibility.

Minnesota prepared BART determinations for NO_X and SO_2 emission control from its subject EGUs after CAIR was suspended for Minnesota. The BART determinations for the five subject to BART EGUs were included in the December 30, 2009, submission.

EPA has analyzed the benefits of the Transport Rule in relation to the benefits of BART on EGUs that are subject to the Transport Rule. On December 30, 2011 (76 FR 82219), EPA proposed a rule finding that the Transport Rule is more beneficial in mitigating visibility impairment than application of BART to the affected EGUs on a source-specific basis. If the proposal is finalized, the Transport Rule may be considered to satisfy the requirement for BART for EGUs in Minnesota for SO_2 and NO_X. Minnesota requested on January 5, 2012 to use Transport Rule participation to satisfy BART for its EGUs. As set forth in the proposed rule, Transport Rule region states are able to use participation in the Transport Rule program as an alternative to implementing source specific BART on each subject EGU. EPA proposes to approve Minnesota's reliance on the already promulgated Transport Rule FIP for EGU sources in Minnesota as an alternative to BART for SO_2 and NO_X for its EGUs. Therefore, EPA is proposing that if EPA finalizes the rule finding that the Transport Rule satisfies the BART requirement for EGUs for SO_2 and NO_X in Minnesota and elsewhere, then the combination of the Minnesota submission including BART for its taconite facilities and the Transport Rule will satisfy applicable requirements for BART.

A RAVI petition was submitted to the FLMs on September 3, 2009. The US Department of Interior certified that a portion of the visibility impairment in Isle Royale National Park and Voyageurs National Park are caused by emissions from Sherco. Interior certified the petition on October 21, 2009. The RAVI rules at 40 CFR 51.302(c) require the determination of emission limits representing BART for certified facilities. A BART determination under the RAVI is similar to, but independent from the BART determination made under the RHR. EPA views Minnesota's submittal as addressing regional haze as regulated under 40 CFR 51.308 and not RAVI as regulated under 40 CFR 51.302 to 51.306. Therefore, this proposed rule only addresses satisfaction of regional haze requirements and does not address whether Minnesota's plan addresses requirements that apply as a result of the certification of Sherco as a RAVI source. EPA will act on RAVI BART in a separate notice.

E. LTS

Under Section 169A(b)(2) of the CAA and 40 CFR 51.308(d), states' regional haze programs must include a LTS for making reasonable progress toward meeting the national visibility goal. Section 51.308(d)(3) requires that Minnesota consult with the affected states in order to develop a coordinated emission management strategy. Minnesota must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the affected Class I areas. This includes Boundary Waters, Voyageurs, and Class I areas in other states that are affected by Minnesota sources. As described in section III.E., the LTS is the compilation of all control measures Minnesota will use to meet applicable RPGs. The LTS must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs for all affected Class I areas.

At 40 CFR 51.308(d)(3)(v), the RHR identifies seven factors that a state must consider in developing its LTS: (A) Emission reductions due to ongoing programs, (B) measures to mitigate impact from construction, (C) emission limits to achieve the RPG, (D) replacement and retirement of sources, (E) smoke management techniques, (F) federally enforceable emission limits and control measures, and (G) the net effect on visibility due to projected emission changes over the LTS period. Minnesota considered the seven factors in developing its LTS.

Minnesota considered these ongoing and expected programs in developing its LTS: CAIR; voluntary EGU projects due to Minnesota statue 216B.1692; BART;

Tier II mobile source standards; heavy-duty diesel engine standards; low sulfur fuel; non-road mobile source control programs; and measures taken to attain the NAAQS.

When Minnesota's participation in the CAIR program was suspended, Minnesota began a process of working with its BART-eligible EGU sources to make BART determinations and put in place BART emission limits in the form of source-specific permits, taking into consideration the emission control projects that these sources had initiated in anticipation of being subject to CAIR and voluntary emission reduction projects that had been encouraged by Minnesota's 216B.1692 statute that provides rate recovery for investments in pollution control. After EPA promulgated the Transport Rule and made known its plans to propose a rule that would allow Minnesota to rely on the Transport Rule to satisfy the BART requirements for SO_2 and NO_X for its EGUs, Minnesota changed course and is now requesting EPA approval for such reliance, as stated above, rather than seeking EPA approval of its source-specific SO_2 and NO_X emission limits as BART for BART-eligible EGUs. Nevertheless, Minnesota expects reductions from Minnesota Power—Boswell, Minnesota Power—Laskin, Minnesota Power—Taconite Harbor, Ottertail Power—Hoot Lake, Rochester Public Utilities—Silver Lake, Xcel Energy—Allen S. King, Xcel Energy—High Bridge, Xcel Energy—Riverside, Xcel Energy—Sherburne County because permits requiring emission reductions have been issued for these sources as a result of either the BART determination process or the voluntary emission reduction program. These reductions are part of Minnesota's LTS.

Other states that contribute to visibility impairment at Boundary Waters and Voyageurs must also reduce emissions from their BART sources. Minnesota incorporated the expected emission reductions due to BART in other states into its modeling. Additional emission reductions are expected from federal programs and from contributing states to attain the $PM_{2.5}$ and ozone NAAQS. Minnesota is in attainment of these NAAQS.

Minnesota has addressed the requirement to consider measures to mitigate the impacts of construction activities through the general and transportation conformity measures that are included in the Minnesota SIP. Minnesota also has Minnesota Rule 7011.0150 that requires measures to prevent particulate matter from becoming airborne included in its SIP.

The state is required to investigate if additional reasonable control strategies are available to help meet the visibility goal. As a result of its analysis of potential controls, Minnesota developed the Northeast Minnesota plan for emission reductions. The Northeastern portion of Minnesota contains the two Class I areas and a number of industrial sources. The sources include taconite facilities that mine and process a variety iron ore, which is an industry that is expected to expand in the future. The plan gives large sources in Carlton, Cook, Itasca, Koochiching, Lake, and Saint Louis Counties region-wide emission reduction targets for 2018. Large sources are point sources in the region that emitted more than 100 TPY of either SO_2 or NO_X in 2002, the base line year. A list of these large sources is in Chapter 10 of the Minnesota regional haze plan. Newer sources that have a potential to emit more than 100 TPY of either pollutant are also included in the Northeast Minnesota plan. Minnesota focused on the emissions it can control. Minnesota divided the light extinction at Voyageurs into the difference pollutants based on their contribution. The state then removed the influence of natural pollutants and those beyond its control. Minnesota determined that it needed to control SO_2 and NO_X in the region and that a 28% reduction is needed to meet the URP. Thus, the 2018 target was set at a 30% reduction in combined SO_2 and NO_X emission from Northeast Minnesota by 2018 with an intermediate target of a 20% reduction by 2012. The combined SO_2 and NO_X emissions were 95,562 TPY in 2002, so a 30% reduction makes the 2018 goal 66,894 TPY combined. Note that the Northeast Minnesota plan does not mandate emission reductions, but sets a region-wide emissions goal for the state to consider when setting emission limits to regional sources.

Minnesota also included requirements in the Administrative Orders for the taconite facilities to demonstrate attainment for recently enacted NAAQS for SO_2 and NO_X. Each facility must provide Minnesota with modeling demonstrating compliance with the one-hour SO_2 and NO_X standards, the emission limits that will result in compliance, the controls or work practices needed to meet the emission limits, and an implementation schedule. The taconite facilities are to comply with the emission limits by June 30, 2017. Minnesota expects the requirements of the taconite facilities to result in indentifying emission control technologies that work well on their facilities.

The visibility impacts of new major sources will be mitigated using the existing New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. The PSD program requires sources to install stringent emission controls. New and modified sources need to consider the potential affect on visibility in Class I areas under the NSR and PSD programs. The region-wide emission targets in the Northeast Minnesota plan will aid the state in considering visibility impairment.

Minnesota followed the requirement to consider source retirement and replacement schedules in developing the RPGs for its Class I areas. Minnesota has also developed a Smoke Management Plan that EPA certified October 27, 2004. The Minnesota Smoke Management Plan allows the state to meet the obligation to consider smoke management during the LTS development. Agricultural and silvicultural burning under the Minnesota Smoke Management Plan will limit the affects of the smoke on air quality including on visibility. A properly managed fire under the right meteorological conditions will help to protect public safety and will prevent deterioration of air quality.

Minnesota must also make sure that the emission limits and control measures it is using to meet the RPGs are federally enforceable. Minnesota included its state rules in the regional haze plan. It also included Administrative Orders and permits. Other rules that Minnesota is relying on are already approved into the Minnesota SIP. EPA believes that control measures and emission limits will be federally enforceable upon final approval of the Minnesota regional haze plan.

F. Monitoring Strategy

The RHR requires a monitoring strategy for measuring, speciation, and reporting on visibility impairment that is representative of all mandatory Class I areas in the state. Minnesota participates in the IMPROVE network. IMPROVE monitors operate in both Boundary Waters and Voyageurs. There are also IMPROVE protocol sites at Blue Mounds and Great River Bluffs in the southern portion of Minnesota. IMPROVE protocol sites follow the same monitoring protocol as IMPROVE site, but located outside mandatory Class I areas. Minnesota commits to reporting visibility data annually for its two Class I area. There are 10 IMPROVE sites and 15 IMPROVE protocol sites within the CENRAP region.

Minnesota also operates a monitoring network that provides data to analyze air quality problems including regional

haze. The monitoring network includes Federal Reference Method, continuous, and speciation monitors. The speciation monitors that gather data on fine particulate composition includes the IMPROVE monitors along with two additional speciation sites in Minneapolis and Rochester. EPA finds that Minnesota's regional haze plan meets the monitoring requirements for the RHR and that Minnesota's network of monitoring sites is satisfactory to measure air quality in its Class I areas and assess its contribution to regional haze.

G. Comments

Minnesota offered the public an opportunity to comment on its proposed regional haze plan. Minnesota gave notice of a comment period on February 25, 2008, that lasted until May 16, 2008. Minnesota held at public meeting on April 10, 2008. An addition comment period was given from July 20, 2009, to September 3, 2009 for revised portions of the plan.

Minnesota included the original comment letters in its plan. The state also provided it responses to the comments. Minnesota made revisions to its proposed plans following the initial comment period. The revised portions of the plan included source-specific BART for EGUs (an element that Minnesota has now indicated that it will replace with reliance on the Transport Rule as an EPA-approved alternative to EGU BART), BART for taconite facilities, and its LTS. Minnesota provided the second comment period to receive public comment on the revised plan. Minnesota is taking public comment from December 19, 2011 to February 3, 2012. Minnesota will also take public comment at the March 27, 2012 Citizens' Board meeting. Minnesota has satisfied the requirements from 40 CFR Part 51, Appendix V to provide evidence that it gave public notice, took comment, and that it compiled and responded to comments.

V. What action is EPA taking?

EPA is proposing action on a regional haze plan that Minnesota submitted on December 30, 2009, and supplemented on January 5, 2012. EPA is proposing to approve Minnesota's State Implementation Plan addressing regional haze for the first implementation period, provided it adopts and submits administrative orders consistent with its recent proposal of administrative orders. Full approval of the BART emission limits for the five EGUs is contingent on EPA's finalization of the rule, proposed on December 30, 2011, finding that the Transport Rule provides greater visibility improvement that implementing BART.

VI. Statutory and Executive Order Reviews.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 17, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–1519 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2011–0091, EPA–R03–OAR–2011–0584; FRL–9622–3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a limited disapproval of six revisions to the Virginia State Implementation Plan (SIP) submitted by the Commonwealth of Virginia, through the Department of Environmental Quality (VADEQ), that address regional haze for the first implementation period. These revisions address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of these SIP revisions to implement the regional haze requirements for Virginia on the basis that the revisions, as a whole, strengthen the Virginia SIP. Also in this action, EPA is proposing a limited disapproval of these same SIP revisions because of the deficiencies in the Commonwealth's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of the

Clean Air Interstate Rule (CAIR). EPA is also proposing to approve this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: Comments must be received on or before February 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0091 and EPA–R03–OAR–2011–0584 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0091 and EPA–R03–OAR–2011–0584, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2011–0091 and EPA–R03–OAR–2011–0584. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by email at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The Commonwealth of Virginia submitted revisions to its SIP for Regional Haze on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011.

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I. What action is EPA proposing to take?

EPA is proposing a limited approval of Virginia's July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011 SIP revisions addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revisions as a whole strengthen the Virginia SIP. However, the Virginia SIP relies on CAIR, an EPA rule, to satisfy key elements of the regional haze requirements. Due to the remand of CAIR, *see North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008), the revisions do not meet all of the applicable requirements of the CAA and EPA's regulations as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308. As a result, EPA is concurrently proposing a limited disapproval of Virginia's SIP revisions.

The revisions nevertheless represent an improvement over the current SIP, and make considerable progress in fulfilling the applicable CAA regional haze program requirements.

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *See Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.* The deficiencies that EPA has identified as preventing a full approval of this SIP revision relate to the status and impact of CAIR on certain interrelated and required elements of the regional haze program. At the time the Virginia regional haze SIP was being developed, the Commonwealth's reliance on CAIR was fully consistent with EPA's regulations. 70 FR 39104, 39142 (July 6, 2005). CAIR, as originally promulgated, requires significant reductions in emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_X) to limit the interstate transport of these pollutants, and the reliance on CAIR by affected states as an alternative to requiring BART for electric generating units (EGUs) had specifically been upheld in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (DC Cir. 2006). In 2008, however, the DC Circuit remanded CAIR back to EPA. *North Carolina* v. *EPA,* 550 F.3d 1176. The Court found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (DC Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR,'' *North Carolina* v. *EPA,* 550 F.3d at 1178. In response to the court's decision, EPA has issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). 76 FR 48208, August 8, 2011. In the Transport Rule, EPA finalized regulatory changes to sunset CAIR and the CAIR FIPs for control periods in 2012 and beyond. 76 FR 48322.

In the Transport Rule, EPA noted that it had not at that time conducted a technical analysis to determine whether compliance with the Transport Rule would satisfy the requirements of the RHR addressing alternatives to BART. EPA has since conducted such an analysis and has proposed that compliance with the Transport Rule will provide for greater reasonable progress toward improving visibility than source-specific BART controls for EGUs located in those states covered by the Transport Rule.[1] 76 FR 82219, December 30, 2011. On that same day, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolution of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[2] in many Class I areas[3] (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715, July 1, 1999.

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to

[1] Regional Haze: Revision to Provisions Governing Alternatives to Source-Specific Best Available Retrofit Technology (BART) Determinations, Limited SIP Approvals, and Federal Implementation Plans. This notice erroneously states in Footnote 5 that EPA has previously proposed a limited disapproval of Virginia's SIP. In fact, today's notice proposes a limited disapproval of Virginia's SIP.

[2] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[3] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[4] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

D. Interstate Transport for Visibility

Sections 110(a)(1) and 110(a)(2)(D)(i)(II) of the CAA require that within three years of promulgation of a NAAQS, a state must ensure that its SIP, among other requirements, ''contains adequate provisions prohibiting any source or other types of emission activity within the State from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.'' Similarly, section 110(a)(2)(J) requires that such SIP ''meet the applicable requirements of part C of (Subchapter I) (relating to visibility protection).''

EPA's 2006 Guidance, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' recognized the possibility that a state could potentially meet the visibility portions of section 110(a)(2)(D)(i)(II) through its submission of a Regional Haze SIP, as required by sections 169A and 169B of the CAA. EPA's 2009 guidance, entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' recommended that a state could meet such visibility requirements through its Regional Haze SIP. EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. This interpretation is consistent with the requirement in the RHR that a state participating in a regional planning process must include ''all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' *See* 40 CFR 51.308(d)(3)(ii).

The regional haze program, as reflected in the RHR, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its ''share'' of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. States working together through a regional planning process, are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. *See* 40 CFR 51.308(d)(3)(ii). Given these requirements, appropriate regional haze SIPs will contain measures that will achieve these emissions reductions and will meet the applicable visibility related requirements of section 110(a)(2). As a result of the regional planning efforts in VISTAS, all states in the VISTAS region provided an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The VISTAS states consulted in the development of the area of influence (AOI), using the products of this technical consultation process to co-develop the Commonwealth's reasonable progress goals for their Class I areas. The modeling done by VISTAS relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in VISTAS, including reductions from BART and other measures to be adopted as part of the state's long term strategy for addressing regional haze.

The Commonwealth submitted Virginia's Regional Haze SIP revisions on July 17, 2008 for Georgia Pacific Corporation BART determination and permit; March 6, 2009 for MeadWestvaco Corporation BART determination and permit; January 14, 2010 for O–N Minerals Facility BART determination and permit; October 4, 2010 for the comprehensive regional haze SIP; November 19, 2010 for the revision to the O–N Minerals Facility BART determination and permit; and May 6, 2011 for the MeadWestvaco Corporation Reasonable Progress permit, to address the requirements of the RHR. On December 10, 2007, December 13, 2007, June 8, 2010, and June 9, 2010, Virginia submitted its 1997 Ozone

[4] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

NAAQS infrastructure SIP submittals. On July 10, 2008, September 2, 2008, June 8, 2010, June 9, 2010, and August 30, 2010, Virginia submitted its 1997 $PM_{2.5}$ NAAQS infrastructure SIP submittals. On August 30, 2010 and April 1, 2011, Virginia submitted its 2006 $PM_{2.5}$ NAAQS infrastructure SIP submittals. Infrastructure SIP submittals are required to be submitted by every state for each NAAQS promulgated by EPA to fulfill the requirements in section 110(a)(2) of the CAA. Visibility protection is a requirement of these infrastructure SIPs in sections 110(a)(2)(D)(i)(II) and 110(a)(2)(J) of the CAA and are addressed in the abovementioned submittals by Virginia. EPA has reviewed Virginia's Regional Haze SIP and as explained in section VII of this action, proposes to find that Virginia's Regional Haze submittal meets the portions of the requirements of the CAA sections 110(a)(2) relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[5]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each

[5] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725, July 1, 1999.

applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [6] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual source's impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. 70 FR 39104, July 6, 2005. EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. 76 FR 82219. EPA also proposed to revise the RHR to allow states to meet the requirements of an alternative program in lieu of BART by participation in the trading programs under the Transport Rule. EPA has not taken final action on that rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs.

[6] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is the relationship of the CAIR and the Transport Rule to the regional haze requirements?

A. Overview of EPA's CAIR

CAIR, as originally promulgated, required 28 states and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contributed to, or interfered with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates

and/or the 1997 NAAQS for 8-hour ozone in any downwind state. 70 FR 25162, May 12, 2005. CAIR established emissions budgets for SO_2 and NO_X for states found to contribute significantly to nonattainment in downwind states and required these states to submit SIP revisions that implemented these budgets. States had the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X-annual, and NO_X-ozone season emissions. In 2006, EPA promulgated FIPs for all states covered by CAIR to ensure the reductions would be achieved in a timely manner.

B. Remand of the CAIR and Promulgation of the Transport Rule

On July 11, 2008, the D.C. Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *North Carolina* v. *EPA,* 531 F.3d 836 (D.C. Cir. 2008). However, in response to EPA's petition for rehearing, the court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. The court thereby left the EPA CAIR rule and CAIR SIPs and FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule consistent with the court's opinion. *North Carolina* v. *EPA,* 550 F.3d at 1178. EPA replaced CAIR with the Transport Rule in August 2011. 76 FR 48208, August 8, 2011. As described in section I of this notice, the Transport Rule has been stayed pending judicial review and, consistent with the order of the D.C. Circuit, EPA is again administering CAIR until the D.C. Circuit rules on the challenges to the Transport Rule.

C. Regional Haze SIP Elements Potentially Affected by the CAIR Remand and Promulgation of the Transport Rule

The following is a summary of the elements of the regional haze SIPs that are potentially affected by the remand of CAIR. As described above, EPA determined in 2005 that states opting to participate in the CAIR cap-and-trade program need not require BART for SO_2 and NO_X at BART-eligible EGUs. 70 FR 39142–39143. Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). Additionally, several states established RPGs that reflect the improvement in visibility expected to result from controls planned for or already installed on sources within the state to meet the CAIR provisions for this implementation period for specified pollutants. Many states relied upon their own CAIR SIPs or the CAIR FIPs for their states to provide the legal requirements that lead to these planned controls, and did not include enforceable measures in the LTS in the regional haze SIP submission to ensure these reductions. States also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for this implementation period. In the case of Virginia, the SIP revisions related to regional haze rely on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, and the RPGs reflect the improvement in visibility expected (at the time) to result from CAIR. EPA has determined in other rulemakings that because of the deficiencies identified in CAIR by the court and the sunsetting of CAIR by the Transport Rule, it would be inappropriate to fully approve states' LTSs that rely upon the emissions reductions predicted to result from CAIR to meet the BART requirement for EGUs or to meet the RPGs in the states' regional haze SIPs. Although CAIR is currently being administered by EPA pursuant to an order by D.C. Circuit in *EME Homer Generation, L.P.* v. *EPA,* it will not remain in effect indefinitely. For this reason, EPA cannot fully approve regional haze SIP revisions that rely on CAIR for emission reduction measures. However, as discussed in section IV.D of this notice, EPA still believes it is appropriate to propose a limited approval of Virginia's regional haze SIP revisions (listed above in section II.D) as these revisions provide an improvement over the current SIP, and make progress in fulfilling the applicable CAA regional haze program requirements. EPA therefore proposes to grant limited approval and limited disapproval of the six Virginia regional haze SIP revisions.[7] The next section discusses how EPA proposes to address these deficiencies.

In the Transport Rule, EPA did not substantively address the question of whether the emissions reductions from the Transport Rule will provide for greater reasonable progress than BART. EPA explained in that rulemaking that EPA had not yet conducted any technical analysis to determine whether the Transport Rule would provide sufficient emissions reductions and concomitant improvements in visibility to be considered to provide for greater reasonable progress than BART. The EPA has now completed such an analysis and has proposed the Transport Rule as an alternative to BART for EGUs located in the Transport Rule states (which include Virginia). 76 FR 82219.

D. Rationale and Scope of Proposed Limited Approval and Limited Disapproval

EPA is proposing a limited approval of Virginia's regional haze SIP revisions. Limited approval results in approval of the entire regional haze submission and all its elements. EPA is taking this approach because an affected state's SIP will be stronger and more protective of the environment with the implementation of measures taken by the state and with Federal approval and enforceability than it would without those measures being included in the state's SIP.

EPA is also proposing a limited disapproval of the Virginia regional haze SIP revisions that rely on CAIR. As explained in the 1992 Calcagni Memorandum, ''[t]hrough a limited approval, EPA [will] concurrently, or within a reasonable period of time thereafter, disapprove the rule * * * for not meeting all of the applicable requirements of the Act. * * * [T]he limited disapproval is a rulemaking action, and it is subject to notice and comment.'' Final limited disapproval of a SIP submittal does not affect the Federal enforceability of the measures in the subject SIP revision nor prevent state implementation of these measures. The legal effects of a final limited disapproval are to provide EPA the authority to issue a FIP at any time, and to obligate EPA to take such action no more than two years after the effective date of the final limited disapproval action. On December 30, 2011, EPA proposed a partial regional haze Federal Implementation Plan (FIP) that would provide that the BART requirements for SO_2 and NO_X emissions from EGUs in Virginia is satisfied by the already-promulgated Transport Rule FIP applicable to EGU sources in Virginia, as would be allowed by a proposed revision to the Regional Haze Rule that was included in the same notice. 76 FR 82219. Comments on the proposed regional haze FIP are requested and may be submitted to the docket for this action or to the docket for the proposed regional haze rule revisions (Docket ID No. EPA–HQ–OAR–2011–0729). The EPA encourages Virginia, as it does all states in a similar situation, to submit a revision to its regional haze SIP incorporating the requirements of the Transport Rule as the alternative to

[7] EPA mistakenly stated in a recent proposed rule (76 FR 82219) that EPA had already proposed limited disapproval the Virginia regional haze SIP based on its reliance on CAIR. *See* 76 FR at 82221, December 30, 2011. EPA is proposing limited disapproval in today's action.

BART for SO_2 and NO_X emissions from EGUs, at which time we will withdraw the regional haze FIP.

V. What is EPA's analysis of Virginia's regional haze submittal?

On July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, VADEQ submitted revisions to the Virginia SIP to address regional haze in the Commonwealth's Class I area as required by EPA's RHR.

A. Affected Class I Areas

Virginia has two Class I areas within its borders: Shenandoah National Park and James River Face Wilderness Area. Virginia is responsible for developing a regional haze SIP that addresses these Class I areas and for consulting with other states that impact these areas.

The October 4, 2010, Virginia regional haze SIP establishes RPGs for visibility improvement at Shenandoah National Park and James River Face Wilderness Area and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS for the areas, Virginia considered both emission sources inside and outside of Virginia that may cause or contribute to visibility impairment in Virginia's Class I areas. The Commonwealth also identified and considered emission sources within Virginia that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the Commonwealth in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the Class I areas in Virginia and those areas affected by emissions from Virginia.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Virginia calculated baseline/current and natural visibility conditions for its Class I area, as summarized below.

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. Virginia opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for its Class I areas.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS. Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity.

The new IMPROVE equation takes into account the most recent review of the science[9] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

VADEQ estimated baseline visibility conditions at the Virginia Class I areas using available monitoring data from IMPROVE monitoring sites in Shenandoah National Park and James River Face Wilderness Area. As explained in section III.B, baseline visibility conditions are the same as current conditions for the first regional haze SIP. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at the Virginia Class I areas. IMPROVE data records for Shenandoah National Park and James River Face Wilderness Area for the period 2000 to 2004 meet the EPA requirements for data completeness. *See* pages 2–8 of EPA's 2003 Tracking Progress Guidance. The 20 percent best and worst days for the baseline period of 2000–2004 for Shenandoah National Park and James River Face Wilderness Area is provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm.*

3. Summary of Baseline and Natural Conditions

For the Virginia Class I areas, the baseline visibility on the 20 percent worst days is approximately 29 deciviews. Natural visibility in the area is predicted to be approximately 11 deciviews on the 20 percent worst days. The natural and baseline conditions for Virginia's Class I areas for both the 20

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[9] The science behind the revised IMPROVE equation is summarized in Virginia's Appendix B and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006 *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

percent worst and best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE VIRGINIA CLASS I AREAS

Class I area	Average for 20% worst days (dv) [9]	Average for 20% best days (dv)
Natural Background Conditions:		
Shenandoah National Park	11.4	3.1
James River Face Wilderness Area	11.1	4.4
Baseline Visibility Conditions (2000–2004):		
Shenandoah National Park	29.3	10.9
James River Face Wilderness Area	29.1	14.2

4. Uniform Rate of Progress

In setting the RPGs, Virginia considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The Commonwealth's implementation plan presents two sets of graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its Class I areas. Virginia constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its area. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Virginia's SIP shows that the Commonwealth's RPGs for its area provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Shenandoah National Park, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 29.3 deciviews for the 20 percent worst days and natural conditions of 11.4 deciviews, i.e., 17.9 deciviews. Over the 60-year period from 2004 to 2064, this would require an average improvement of 0.298 deciviews per year to reach natural conditions. For the James River Face Wilderness Area, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 29.1 deciviews for the 20 percent worst days and natural conditions of 11.1 deciviews, i.e., 18.0 deciviews. Over the 60-year period from 2004 to 2064, this would require an average improvement of 0.30 deciviews per year to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Shenandoah National Park, Virginia would need to project at least 4.172 deciviews over the first implementation period (i.e., 0.298 deciviews × 14 years = 4.172 deciviews) of visibility improvement from the 29.1 deciviews baseline in 2004, resulting in visibility levels at or below 24.928 deciviews in 2018. Virginia would need to project at least 4.2 deciviews improvement in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at James River Face Wilderness Area for the first implementation period. Virginia projects for Shenandoah National Park a 7.4 deciview improvement to visibility from the 29.3 deciview baseline to 21.9 deciviews in 2018 for the 20 percent most impaired days, and a 2.2 deciview improvement to 8.7 deciviews from the baseline visibility of 10.9 deciviews for the 20 percent least impaired days. For James River Face Wilderness Area, Virginia projects a 6.7 deciview improvement to visibility from the 29.1 deciview baseline to 22.4 deciviews in 2018 for the 20 percent most impaired days, and a 1.8 deciview improvement to 12.4 deciviews from the baseline visibility of 14.2 deciviews for the 20 percent least impaired days.

C. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Virginia's LTS for the first implementation period addresses the emissions reductions from Federal, state, and local controls that take effect in the Commonwealth from the end of the baseline period starting in 2004 until 2018. The Virginia LTS was developed by the Commonwealth, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Virginia and in surrounding states that likely have the largest impacts currently on visibility at the Commonwealth's Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the Commonwealth's Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

CAIR is also an element of Virginia's LTS. CAIR rule revisions were approved into the Virginia SIP in 2007. Virginia opted to rely on CAIR emission reduction requirements to satisfy the BART requirements for SO_2 and NO_X from EGUs. *See* 40 CFR 51.308(e)(4). Therefore, Virginia only required its BART-eligible EGUs to evaluate PM emissions for determining whether they are subject to BART, and, if applicable, for performing a BART control assessment. *See* section III.D. of this notice for further details. Additionally, as discussed below in section V.C.5, Virginia concluded that no additional controls beyond CAIR are reasonable for reasonable progress for its EGUs for this first implementation period. Prior to the remand of CAIR, EPA believed the Commonwealth's reliance on CAIR for specific BART and reasonable progress provisions affecting its EGUs was

adequate, as detailed later in this notice. As explained in section IV of this notice, EPA proposes today to issue a limited approval and a proposed limited disapproval of the Commonwealth's regional haze SIP revisions that rely on CAIR requirements.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from Virginia. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section V.C.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable Federal VOC reductions were incorporated into Virginia's regional haze analyses, Virginia did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: Stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many Federal and state control programs being implemented that VISTAS and Virginia anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the Virginia Class I areas. The control programs relied upon by Virginia include CAIR; NO_X SIP Call; North Carolina's Clean Smokestacks Act; Georgia multi-pollutant rule; consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, East Kentucky Power Cooperative (EKPC)—Cooper and Spurlock stations, and American Electric Power (AEP); NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X Reasonably Available Control Technology state rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; Federal 2007 heavy duty diesel engine standards for on-road trucks and buses; federal Tier 2 tailpipe controls for on-road vehicles; federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emission inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

On June 8, 2007, and effective July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule.[10] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. Notwithstanding the vacatur of the Industrial Boiler MACT Rule, the VISTAS states, including Virginia, decided to leave these controls in the modeling for their regional haze SIPs since it was believed at the time that by 2018, EPA would re-promulgate an industrial boiler MACT rule or the states would have addressed the issue through state-level case-by-case MACT reviews in accordance with section 112(j) of the CAA. This in fact was the case since EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006), and issued a final rule on March 21, 2011 (76 FR 15608). Thus, Virginia has sufficient time to assure the required controls are in place prior to the end of the first implementation period in 2018 since compliance with MACT limits for industrial boilers will occur well before the 2018 RPGs for regional haze. Even though Virginia's modeling is based on the vacated Industrial Boiler MACT limits, Virginia's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the Commonwealth's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (i.e., 0.1 to 0.2 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emission limits would affect the adequacy of the existing Virginia regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT finalized in March 2011, we expect Virginia to do so in their 5-year progress report. Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emission inventories for Virginia.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR VIRGINIA

[Tons per year]

	VOC	NH_3	PM_{10}	$PM_{2.5}$	NO_X	SO_2
Point	43,906	3,231	17,212	12,771	147,301	305,107
Area	174,851	43,975	239,096	45,292	51,753	105,982
On-Road Mobile	157,989	7,770	5,312	3,067	219,835	8,196
Non-Road Mobile	74,866	48	8,728	8,288	63,219	8,663
Biogenics	923,219	N/A	N/A	N/A	11,443	N/A

[10] *See NRDC* v. *EPA,* 489 F.3d 1250.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR VIRGINIA—Continued

[Tons per year]

	VOC	NH_3	PM_{10}	$PM_{2.5}$	NO_X	SO_2
Total	1,374,831	55,024	270,348	69,418	493,551	427,948

* N/A—not applicable.

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR WEST VIRGINIA

[Tons per year]

	VOC	NH_3	PM_{10}	$PM_{2.5}$	NO_X	SO_2
Point	54,200	4,226	27,662	23,570	122,019	183,164
Area (includes fires)	152,186	50,296	277,969	48,942	56,736	109,538
On-Road Mobile	55,992	9,653	2,813	1,404	57,192	949
Non-road Mobile	49,052	61	6,208	5,891	40,393	507
Biogenics	923,219	N/A	N/A	N/A	11,443	N/A
Total	1,234,649	287,783	314,652	79,807	287,783	294,158

* N/A—not applicable.

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including Virginia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional- scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12x12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-p.m.-rh-guidance.pdf,* (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the Commonwealth of Virginia provided the appropriate supporting documentation for all required analyses used to determine the Commonwealth's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA agrees with the VISTAS model performance procedures and results,

and that the CMAQ is an appropriate tool for the regional haze assessments for the Virginia LTS and regional haze SIP, further EPA analysis can be found in the Technical Support Document for the Modeling Portions of the Commonwealth of Virginia's Regional Haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 69 to 74 percent of the calculated light extinction for all but one of the Class I areas in the VISTAS states. In particular, for Shenandoah National Park and James River Face Wilderness Area, sulfate levels on the 20 percent worst days account for 60–70 percent of the visibility impairment. However, occasionally particulate organic matter (POM) can be a significant contributor as well. On the very few 20 percent worst visibility days that occur outside of the April through September time period, either PM, ammonium nitrate, or a combination of POM and ammonium nitrate offer significant contributions towards visibility impairment in the James River Face Wilderness Area and Shenandoah National Park.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. Virginia's Class I areas is an ''inland'' area.

Results from VISTAS' emission sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS, including the Virginia areas. Virginia concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the Virginia Class I areas. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include Shenandoah National Park and James River Face Wilderness Area, the benefits of reducing NO_X and NH_3 emissions at these sites are small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including Virginia. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

Virginia considered the factors listed in 40 CFR 51.308(d)(3)(v) and in section III.E. of this action to develop its LTS as described below. Virginia, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I areas in Virginia. Virginia considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. The Virginia Department of Forestry (VDOF) has developed smoke management guidelines and these guidelines specifically note that Federal Class I air quality areas are sensitive areas that need special consideration if located near planned prescribed burns.

With regard to fine soils, the Commonwealth considered those activities that generate fugitive dust, including construction activities. With regard to all road and bridge construction activities, Virginia Department of Transportation (VDOT) uses Section 107.14(b)(2) of VDOT's 2007 *Road and Bridge Specifications* in all contracts. With regard to ammonia, the Commonwealth has chosen not to develop controls for ammonia emissions from Virginia sources in this first implementation period because of its relatively minor contribution to visibility impairment. EPA concurs with the Commonwealth's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the Commonwealth's Class I area, and therefore, finds that Virginia has adequately satisfied 40 CFR 51.308(d)(3)(v).

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to Virginia, the VISTAS sensitivity analysis projects visibility benefits in Shenandoah National Park and James River Face Wilderness Area from SO_2 reductions from EGUs in nearby VISTAS states. Additional, smaller benefits are projected from SO_2 emissions reductions from non-utility industrial point sources. SO_2 emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions, and, thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas in VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, Virginia concluded that reducing SO_2 emissions from EGU and non-EGU point sources in certain VISTAS states, states in the Midwest Regional Planning Organization and Mid-Atlantic/Northeast Visibility Union (MANE–VU) regions, and outside the modeling domain would have the greatest visibility benefits for the Virginia Class I areas. The Commonwealth chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the Commonwealth's Class I areas for additional emissions reductions for reasonable progress in this first implementation period (described in sections V.C.4. and V.C.5. of this notice). EPA agrees with the Commonwealth's analyses and conclusions used to determine the pollutants and source categories that

most contribute to visibility impairment in the Class I area and finds the Commonwealth's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions to be appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the Commonwealth may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in Virginia and Surrounding Areas

As discussed in section V.C.3. of this notice, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[11] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including those in Virginia. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States.

VISTAS developed a methodology for Virginia, which enabled the Commonwealth to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I areas. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emissions units within a given area of influence (AOI) around each Class I area that Virginia's sources impact, the Commonwealth established a threshold to determine which emissions units would be evaluated for reasonable progress control. In applying this methodology, VADEQ first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for its Class I areas, and those surrounding areas in other states potentially impacted by emissions from emissions units in Virginia. The Commonwealth then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress, using the following four ''reasonable progress factors'' as required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emissions unit.

Virginia's SO_2 AOI methodology captured 44.3 percent of the total point source SO_2 contribution to visibility impairment in the Shenandoah Class I area, and required an evaluation of 18 emissions units (5 of which are located in Virginia). The AOI methodology captured 49.9 percent of the total point source SO_2 contribution to visibility impairment in the James River Face Class I area, and required an evaluation of 12 emission units (8 of which are located in Virginia). Capturing a significantly greater percentage of the total contribution would involve an evaluation of many more emissions units that have substantially less impact. EPA believes the approach developed by VISTAS and implemented for the Class I areas in Virginia is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the Commonwealth's Class I areas. The approach is consistent with EPA's Reasonable Progress Guidance. The technical approach of VISTAS and Virginia was objective and based on several analyses, which included a large universe of emissions units within and surrounding the Commonwealth of Virginia and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emissions units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA Factors in the Reasonable Progress Analysis

VADEQ identified 11 facilities in Virginia (see Table 4) with SO_2 emissions that were above the Commonwealth's minimum threshold for reasonable progress evaluation because they were modeled to fall within the sulfate AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area.[12]

TABLE 4—VIRGINIA FACILITIES SUBJECT TO REASONABLE PROGRESS ANALYSIS

Facilities With a Unit(s) Subject to Reasonable Progress Analysis:
International Paper Company, power boiler #7.
MeadWestvaco, single stack for boilers #6–9.
Roanoke Cement Company, kiln #5.
Georgia Pacific—Big Island, boiler #4.
Mohawk Industries, boiler #7.
Celanese Acetate, LLC, boilers #1–7.
EGU Unit(s) Subject to Reasonable Progress Analysis:
AEP-Clinch River, point ID 1, 2, 3.
AEP-Glyn Lyn, point ID 3.
Dominion-Bremo, point ID 1, 2.
Dominion-Possum Point, point ID 5.
Dominon-Chesterfield, point ID 6, 8.

The Commonwealth also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. VADEQ analyzed whether SO_2 controls should be required for the facilities subject to reasonable progress based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGUs, VADEQ concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. Using CAIR as a guide, VADEQ used a cost of $2,000 per ton of SO_2 controlled or reduced as a threshold for cost effectiveness. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the Virginia SIP still ensures reasonable progress. In proposing to approve Virginia's reasonable progress analysis, EPA is placing great weight on the fact

[11] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, the EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

[12] See also Virginia's SIP, Appendix H, Table 7.7.4–2. Units within Virginia with Visibility Impairment Contributions of at least 1%.

that there is no indication in the SIP submittal that Virginia, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas. EPA notes that given the emissions reductions resulting from CAIR, Virginia's BART determinations, and the measures in nearby states, the visibility improvements projected for the affected Class I area are in excess of that needed to be on the uniform rate of progress glidepath. After the Commonwealth submitted its regional haze SIP on October 4, 2010, demonstrating that no additional controls on non-EGU sources identified in the AOI were reasonable because it was economically and/or technically infeasible, Virginia did additional analysis and found that a higher efficiency of control was reasonable at the MeadWestvaco Corporation. VADEQ submitted, on May 6, 2011, a permit to incorporate the additional 15 percent control for MeadWestvaco Corporation for achieving additional reasonable progress into their regional haze SIP.

6. BART

BART is an element of Virginia's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART and (c) a determination of the BART controls. These components, as addressed by VADEQ and VADEQ's findings, are discussed below.

a. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the Commonwealth's boundaries. VADEQ identified the BART-eligible sources in Virginia by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and was in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. *See* 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in Virginia, as discussed in section V.C.3. of this action. VADEQ has determined, based on the VISTAS modeling, that ammonia emissions from the Commonwealth's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

b. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e., those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, Virginia required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

1. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [13] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' The Guidelines state that EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment. *See* 70 FR 39162. Virginia, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in Virginia were subject to or exempt from BART.

[13] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including Virginia, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol. VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations.

2. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''A single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The BART Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Virginia used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. Virginia concluded that, considering the results of the visibility impacts modeling conducted, a 0.5 deciview threshold was appropriate and a lower threshold was not warranted since the majority of the visibility impacts were well below 0.5 deciview and the sources are distributed across the Commonwealth. Also, even though several sources impacted each Class I area, the overall visibility impacts were low from the sources. As stated in the BART Guidelines, where a state concludes that a large number of these BART-eligible sources within proximity of a Class I area justify a lower threshold, it may

warrant establishing a lower contribution threshold. *See* 70 FR 39161–39162, July 6, 2005. EPA is proposing to agree with Virginia that the overall impacts of these sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART

Virginia initially identified 13 facilities with BART-eligible sources. Three of these are EGUs and ten are non-EGU sources. The Commonwealth subsequently determined that all three EGUs and seven of the non-EGU sources are exempt from being considered BART-subject. Table 5 identifies the 13 BART-eligible sources located in Virginia, and of these, lists the three non-EGU sources subject to BART.

TABLE 5—VIRGINIA BART–ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART Analysis:
O–N Minerals Global Chemstone Operation.
MeadWestvaco Packaging Resource Group.
Georgia Pacific Corp Big Island Plant.
Facilities With Unit(s) Found Not Subject to BART:
EGU CAIR and BART Modeling (PM only) Exempt Sources:[14]
Dominion Virginia Power—Chesterfield.
Dominion—Yorktown.
Dominion Virginia Power—Possum Point.
Non-EGU BART Modeling:
Island Creek Coal Co./Virginia Pocahontas Mine.
Chemical Lime Company—Kimballton Plant.
Intermet Foundry Archer Creek.
Stone Container Corporation (D/B/A Smurfit Stone).
Honeywell Nylon LLC—Hopewell.
International Paper Company.
Duke Energy.

All but three of the non-EGU sources demonstrated that they are not subject to BART by showing through modeling less than a 0.5 deciview visibility impact at the affected Class I areas. This modeling involved assessing the visibility impact of emissions of NO_X, SO_2, and PM_{10} as applicable to individual facilities. The three sources that were not able to model an exemption from BART are listed in Table 5 above.

For the three BART-eligible EGUs, Virginia relied upon CAIR emission limits for SO_2 and NO_X to satisfy the obligation to comply with the BART requirements in accordance with 40 CFR 51.308(e)(4). Therefore, EGU sources only modeled PM_{10} emissions, including all PM smaller than 10 microns (e.g., $PM_{2.5}$). All of the EGUs demonstrated that their PM_{10} emissions do not contribute to visibility impairment in any Class I area.

Prior to the remand of CAIR, the Commonwealth's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, as explained in section IV of this notice, given the status of CAIR, EPA is proposing to find that Virginia may not rely on CAIR to provide reductions to satisfy the BART requirements of the regional haze program. Although CAIR is in force once again following the court's order staying the Transport Rule, it will not remain in effect indefinitely. EPA proposes today to issue a limited approval and a limited disapproval of the Commonwealth's regional haze SIP revision.

c. BART Determinations for non-EGU Sources

In accordance with the BART Guidelines, to determine the level of control that represents BART for each of the three non-EGU BART-subject sources, the state first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. Virginia's evaluations and conclusions, and EPA's assessment, are summarized below.

The O–N Mineral permit was submitted as a SIP revision by VADEQ on January 14, 2010 and an amendment was submitted on November 19, 2010, to establish BART emission limits, monitoring, and record keeping requirements for the O–N Mineral Facility. VADEQ determined that BART is the permanent shutdown of the calcimatic kiln (U–12) and limits for SO_2 are 0.29 pounds per tons stone feed (lbs/tsf) and 14.7 pounds per hour (lbs/hr), NO_X limits are 1.74 lbs/tsf and 87.0 lbs/hr with the average of a 3 hour sampling period, and PM limits are 0.12lbs/tsf and 6.0lbs/hr with the average of a 3 hour sampling period for the rotary kiln (U–5). The compliance date for these BART controls for O–N Minerals is 180 days after August 6, 2010. Once the BART limits are established, the source is then required by 40 CFR 51.308(e)(1)(v) to maintain the control equipment required and establish procedures to ensure such equipment is properly operated and maintained.

The MeadWestvaco permit was submitted by VADEQ on March 6, 2009. MeadWestvaco has four units that are BART-subject. These units are two power boilers, number 9 and 10, recovery furnace number 1, and smelt dissolving tank number 1. The number 9 boiler limit is a combined emission limit for boilers number 6 through 9 because all four boilers emit through a single stack. The limits for nitrogen dioxide (NO_2) are 8242.1 lbs/hr and 1,060 tons per year (tpy), for SO_2 the limits are 1,831 lbs/hr and 8,020 tpy, and for PM_{10} the limits are 166.4 lbs/hr and 728.9 tpy. The emission limits for power boiler number 10 are a fuel restriction of at least 90 percent natural gas utilization for SO_2, 66.0 lbs/hr of NO_X, and 2.51 lbs/hr of PM. The emission limits for recovery furnace number 1 for SO_2 are 713.7 lbs/hr, for NO_X the limits are 211.2 lbs/hr, for PM the emission limits are 150.0 lbs/hr, 85.0 lbs/hr on an annual average, and 350 tpy, and for PM_{10} the emission limits are 103.8 lbs/hr, 58.8 lbs/hr on an annual average and 242 tpy. The emission limits for the smelt dissolving tank for SO_2 are 14.8 lbs/hr and 64.8 tpy, for PM the limits are 14.1 lbs/hr and 58.0 tpy, and for PM_{10} the limits are 12.6 lbs/hr and 51.9 tpy. As a part of the BART determination process Virginia determined that MeadWestvaco could get an additional 15 percent SO_2 reduction, which would be an additional RPG reduction. The new SO_2 limit for MeadWestvaco boilers number 6 through 9 submitted by VADEQ on May 6, 2011 is 1,556 lbs/hr and 6,817 tpy. MeadWestvaco must comply with the RPG limit by January 1, 2016.

The Georgia Pacific—Big Island permit was submitted by VADEQ on July 17, 2008. Georgia Pacific—Big Island has two power boilers (numbers 4 and 5) that are BART-subject. The emission limits for power boiler number 4 for SO_2 are 50 lbs/hr and 219 tpy, the limits for NO_X are 169 lbs/hr and 740.2 tpy, and the limits for PM_{10} are 0.07 pounds per one million British thermal unit (lbs/MMBtu), 19.9 lbs/hr and 87 tpy. The effective date for the emission limits of power boiler number 4 is June 12, 2008 for NO_X and PM_{10}. The effective date for the SO_2 emission limits of power boiler number 4 is 180 days after scrubber is installed for the

[14] EGUs were only evaluated for PM emissions. The Commonwealth relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs subject to CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

hourly limit and July 1, 2013 or 13 months after the scrubber performance test for the annual limit. The emission limits for power boiler number 5 for SO_2 are 485.1 lbs/hr and 374.0 tpy, the limits for NO_X are 139.3 lbs/hr and 610.1 tpy, and the limits for PM_{10} are 0.07 lbs/MMBtu, 23.7 lbs/hr and 103.9 tpy. The effective date for the emission limits of power boiler number 5 is 12 months after June, 12, 2008.

EPA agrees with VADEQ's analyses and conclusions for the BART emission units located at the O–N Mineral, MeadWestvaco, and Georgia Pacific—Big Island facilities. EPA has reviewed the Virginia analyses and concluded they were conducted in a manner that is consistent with EPA's BART Guidelines. EPA has determined that Virginia's submittals meet the requirements of section 169A(g)(2) of the CAA to consider available technology, the cost of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Therefore, the conclusions reflect a reasonable application of EPA's guidance to these sources.

The BART determinations for each of the facilities discussed above and the resulting BART emission limits were adopted by Virginia into its regional haze SIP. VADEQ incorporated the BART emission limits into state operating permits, and submitted these permits individually, as part the Commonwealth's regional haze SIP. The BART units in Virginia (O–N Minerals, MeadWestvaco, and Georgia Pacific—Big Island) are required to comply with these emission limits no later than five years after publication in the **Federal Register** of EPA's final approval of the Virginia regional haze SIP, to allow time for needed operational changes.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and state regulations for the period 2004–2018, and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the Virginia Class I areas had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by Virginia. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that Virginia will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for the Virginia Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 6 below, Virginia's 2018 RPG for the 20 percent worst days provides greater visibility improvement by 2018 than the uniform rate of progress for the Commonwealth's Class I areas (i.e., 26.64 deciviews in 2018). Also, the RPG for the 20 percent best days provides greater visibility improvement by 2018 than current best day conditions. The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. *See* 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like Virginia, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[15]

TABLE 6—VIRGINIA 2018 RPGS

[In deciviews]

Class I area	Baseline visibility—20% worst days	2018 RPG—20% worst days (improvement from baseline)	Uniform rate of progress at 2018—20% worst days (improvement from baseline)	Baseline visibility—20% best days	2018 RPG—20% best days (improvement from baseline)
Shenandoah National Park	29.3	21.9 (7.4)	25.1 (4.2)	10.9	8.7 (2.2)
James River Face Wilderness Area	29.1	22.4 (6.7)	24.9 (4.2)	14.2	12.4 (1.8)

The RPGs for the Class I areas in Virginia are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emission characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually revise its RPGs every time an event affecting these future projections changed.

Virginia submitted a revision on May 6, 2011 requiring an additional reduction from MeadWestvaco for reasonable progress. The RPG is an additional 15 percent control of SO_2 beyond the BART emission limit from boilers number 6 through 9. This additional reduction of SO_2 is required to be implemented by January 1, 2016. The revised emission limits have been incorporated into the Commonwealth's operating permit.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a

[15] Many of the CAIR states without Class I areas similarly relied on CAIR emission reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

mandatory standard that must be achieved by a particular date. *See* 64 FR 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. *See* 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. *See* 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. Virginia specifically committed to follow this process in the LTS portion of its submittal.

EPA anticipates that since the Transport Rule will result in greater emission reductions overall than CAIR, implementation of the Transport Rule will also result in similar or better improvements in visibility than predicted from CAIR. By the time Virginia is required to undertake its five-year progress review, however, it is likely that the impact of the Transport Rule and other measures on visibility can be meaningfully assessed. If meeting the RPGs at its Class I Federal area is in jeopardy, the Commonwealth will be required to address this circumstance in its five-year review. Accordingly, EPA proposes to approve Virginia's RPGs for the Shenandoah National Park and James River Face Wilderness Area.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G. of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Virginia. In addition, the Class I area in Virginia is neither experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Thus, the October 4, 2010, Virginia regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. However, Virginia previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source. EPA finds that this regional haze submittal appropriately supplements and augments Virginia's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In the October 4, 2010 submittal, VADEQ updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, VADEQ affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, VADEQ made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, VADEQ made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located within Virginia and in each mandatory Class I area located outside Virginia which may be affected by emissions from within Virginia. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, Virginia will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the Virginia new source review (NSR) rules, previously approved in the Commonwealth's SIP, continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Class I Federal area. The Virginia SIP contains a plan addressing the associated monitoring and reporting requirements. *See* 53 FR 26256, July 12, 1988. Although EPA's approval of this plan neglected to remove the Federally promulgated provisions set forth in 40 CFR 52.936, EPA intends to correct this omission in a separate future rulemaking.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Virginia is the IMPROVE network. As discussed in section V.B.2. of this notice, there are currently two IMPROVE sites in Virginia, which serve as the monitoring sites for Shenandoah National Park and James River Face Wilderness Area in Virginia.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the Virginia regional haze submittal. In the submittal, Virginia states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods. Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. Virginia is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, the FLMs perform long-term limited monitoring that provides additional insight into progress toward regional haze goals. Also, VADEQ operates a comprehensive $PM_{2.5}$ network of filter-based Federal reference method monitors, continuous mass monitors, and filter-based speciated monitors.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and in May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas

in the VISTAS region. VADEQ has evaluated the impact of sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, VADEQ applied its AOI methodology to identify sources in the Commonwealth that have emissions units with impacts large enough to potentially warrant further evaluation and analysis. The Commonwealth identified five emissions units in Virginia with a contribution of one percent or more to the visibility impairment at Class I areas in neighboring states.

Regarding the impact of sources outside of the Commonwealth on the Class I areas in Virginia, VADEQ sent letters to Maryland, North Carolina, and West Virginia pertaining to emissions units within these states that the Commonwealth believes contributed one percent or higher to visibility impairment in the Virginia Class I areas. Virginia identified three facilities in Maryland (Westvaco/Luke Plant, Eastalco Aluminum, and Mirant Mid-Atlantic), one facility in North Carolina (Duke Energy Dan River Steam Station), and four facilities in West Virginia (Capital Cement Corporation, Dominion-Mount Storm, Monogahela-Harrison, and Appalachian Power-John E. Amos) as meeting its SO_2 AOI contribution threshold. VADEQ opted not to request any additional emissions reductions for reasonable progress from North Carolina during the first implementation period. Responses from the neighboring states can be found in Virginia's Appendix J of the October 4, 2010 submittal. Any controls resulting from those will provide additional emissions reductions and resulting visibility improvement, which gives further assurances that Virginia will achieve its RPGs. Therefore, to be conservative, Virginia opted not to rely on any additional emissions reductions from sources located outside the Commonwealth's boundaries beyond those already identified in Virginia's regional haze SIP submittal and as discussed in section V.C.1. (Federal and state controls in place by 2018) of this action.

Virginia received letters from the MANE–VU RPO States of New Jersey and New Hampshire in the Spring of 2007, stating that they wish to have further consultation with Virginia about visibility impairment to Class I areas in those states. MANE–VU met with VISTAS states on August 20, 2007 in Atlanta, Georgia and presented their ''asks'' which are the RPGs for the MANE–VU Class I Areas. As part of its ''asks,'' the MANE–VU states identified 167 EGU stacks that impact their Class I areas the most requested states to implement a 90 percent control efficiency for SO_2 on those stacks. The MANE–VU states identified 10 EGU stacks in Virginia as a part of the 167 EGU stacks. It also requested a control strategy to provide a 28 percent reduction in SO_2 emissions from sources other than EGUs that would be equivalent to MANE–VU's proposed low sulfur fuel oil strategy. Of the Virginia EGUs identified by MANE–VU, 82 percent of those sources have existing SO_2 controls or will have SO_2 controls by 2018 or sooner.

VISTAS modeling showed that no Virginia stack contributes more than 1 percent or more to the calculated visibility impairment to the Brigantine Class I area in contrast to the MANE–VU modeling. Virginia's non-EGUs are predicted to emit 57,790 tons of SO_2 in 2018. MANE–VU requested a 28 percent reduction in these emissions, or approximately 16,181 tons. Two EGUs in Virginia not on the MANE–VU listing of 167 stacks already have enforceable conditions in place that will provide reductions of 16,900 tons of SO_2 satisfying the non-EGU reductions requested by MANE–VU. VADEQ believes that these emissions reductions satisfy MANE–VU's request.

EPA finds that Virginia has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal. *See* Appendix J of Virginia's October 4, 2010 submittal for state letters and the Commonwealth's responses and Appendix D for specific emission inventories.

2. Consultation With the FLMs

Through the VISTAS RPO, Virginia and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. VADEQ also provided a draft plan dated October 1, 2007, to the FLMs (and EPA) for review. Appendix J of the Virginia regional haze SIP submittal includes the comment letters from the FLMs, which indicate that the FLMs appear to be generally supportive of the Commonwealth's regional haze SIP, and were pleased with the technical information summarized in the regional haze SIP narrative. The FLM comments mainly suggested that Virginia insert language to further expand and/or clarify certain information. For example, the FLMs requested that VADEQ discuss the linkage between the LTS and the Commonwealth's NSR/PSD program in the SIP narrative. Additionally, the FLMs asked VADEQ to reiterate statements in the appendices regarding the conclusions of interstate consultation discussions in the SIP narrative. The FLMs also suggested that emission inventory data from 2002 in the SIP narrative be put with the projection data for 2009 and 2018 to aid the reader with understanding the anticipated effects of Virginia's LTS. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), VADEQ made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions. VADEQ also affirms in the SIP that FLM consultation is required for those sources subject to the Commonwealth's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

As also summarized in section V.D. of this action, consistent with 40 CFR 51.308(g), VADEQ affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the Virginia regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I areas located within Virginia and in each mandatory Class I area located outside Virginia that may be affected by emissions from within Virginia. Virginia also offered recommendations for several technical improvements that, as funding allows, can support the Commonwealth's next LTS. These recommendations are discussed in detail in the Virginia submittal in Appendix K. If another state's regional haze SIP identifies that Virginia's SIP needs to be supplemented or modified, and if, after appropriate consultation Virginia agrees, today's action may be revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

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

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative

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

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

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

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

VII. What action is EPA taking?

EPA is proposing a limited approval and a limited disapproval of the revisions to the Virginia SIP submitted by the Commonwealth of Virginia on July 17, 2008, March 6, 2009, January 14, 2010, October 4, 2010, November 19, 2010, and May 6, 2011, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action. The limited disapproval is only in regard to the SIP revisions' reliance on CAIR as an alternative to BART for SO_2 and NO_X emissions from EGUs and as a part of its long-term strategy. EPA has proposed in a separate notice a FIP that would correct this deficiency in Virginia's regional haze SIP by indicating that the Transport Rule is the alternative to this portion of the BART requirement. EPA is also proposing to find that the revisions submitted by Virginia meet the applicable visibility related requirements of CAA section 110(a)(2) including, but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8-Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for

informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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 Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires 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 proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997).

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (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 of the NTTAA of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical. EPA believes that VCS are inapplicable to this action. Today's limited approval and limited disapproval does not require the public to perform activities conducive to the use of 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 United States.

EPA lacks the discretionary authority to address environmental justice in this Virginia Regional Haze proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: January 17, 2012.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–1510 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0329; FRL–9622–9]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of revisions to the Ohio State Implementation Plan (SIP) addressing regional haze for the first implementation period. Ohio submitted its regional haze plan on March 11, 2011. The Ohio regional haze plan addresses Clean Air Act (CAA) and Regional Haze Rule (RHR) requirements for states to remedy any existing and prevent future anthropogenic impairment of visibility at mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area, also referred to as the ''regional haze program''. States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of these SIP revisions to implement the regional haze requirements for Ohio on the basis that the revisions, as a whole, strengthen the Ohio SIP. In a separate action, EPA has previously proposed a limited disapproval of the Ohio regional haze SIP because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, we are not taking action in this notice to address the state's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before February 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0329, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0329. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.*, sulfates, nitrates, organic particles, elemental carbon, and soil dust) and its precursors-sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases ammonia (NH_3) and volatile organic compound (VOCs). Fine particle precursors react in the atmosphere to form fine particulate matter. Aerosol $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity and distance one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range, the distance at which an object is barely discernable, in many Class I areas [1] in the western United States is 100–150 kilometers. That is about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In the eastern and Midwestern Class I areas of the United States, the average visual range is generally less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's RHR

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources known as, ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084. These regulations, codified at 40 CFR part 50, subpart P, represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze, the RHR, on July 1, 1999 (64 FR 35713). The RHR, which amends 40 CFR part 50, subpart P, revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The subpart P requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[2]

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, effectively addressing the problem of visibility impairment in Class I areas means that states need to develop coordinated strategies that take into account the effect of emissions from one jurisdiction on the air quality in another state.

EPA has encouraged the states and tribes to address visibility impairment from a regional perspective because the pollutants that lead to regional haze can originate from sources located across broad geographic areas. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country and then pursued the development of regional strategies to reduce $PM_{2.5}$ emissions and other pollutants leading to regional haze.

The Midwest RPO (MRPO) is a collaborative effort of state governments and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Midwest. The member states are Illinois, Indiana, Michigan, Ohio, and Wisconsin.

III. What are the requirements for regional haze SIPs?

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require those sources to install best available retrofit technology (BART) reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

A. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview [3] (dv) as the principal metric or unit for expressing visibility impairment. This visibility metric expresses uniform proportional changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a Federal Land Manager. 42 U.S.C. 7602(i). When we use the term ''Class I area,'' we mean a ''mandatory Class I Federal area.''

[2] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[3] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

conditions. Visibility expressed in deciview is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.

The deciview is used in expressing reasonable progress goals (RPGs), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution. The national goal is a return to natural conditions such that anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437) and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP is submitted and at the progress review every five years, midway through each 10-year implementation period. The RHR requires states with Class I areas (Class I states) to determine the degree of impairment in deciviews for the average of the 20 percent least impaired (best) and 20 percent most impaired (worst) visibility days over a specified time period at each of its Class I areas. Each state must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*) (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIP, due December 17, 2007, the ''baseline visibility conditions'' are the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent best days and 20 percent worst days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while comparisons of future conditions against baseline conditions will indicate the amount of progress made. In general, the 2000 to 2004 baseline period is considered the time from which improvement in visibility is measured.

B. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two distinct RPGs, one for the best days and one for the worst days for every Class I area for each approximately 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting RPGs, a state with a mandatory Class I area (Class I state) must provide for an improvement in visibility for the worst days over the approximately 10-year period of the SIP and ensure no degradation in visibility for the best days.

Class I states have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. The states must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp.4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (''uniform rate of progress'' or ''glide path'') and the emissions reduction needed to achieve that rate of progress over the approximately 10-year period of the SIP. In setting RPGs, each Class I state must also consult with potentially contributing states, *i.e.* those states that may affect visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

C. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain older large stationary sources to address visibility impacts from these sources. Specifically, CAA section 169A(b)(2)(A) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (BART Guidelines) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. A state must use the approach in the BART Guidelines in making a BART determination for a fossil fuel-fired electric generating units (EGU) with total generating capacity in excess of 750 megawatts. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether

VOC or NH_3 emissions impair visibility in Class I areas.

States may select an exemption threshold value for their BART modeling under the BART Guidelines, below which a BART-eligible source may be considered to have a small enough contribution to visibility impairment in any Class I area to warrant being exempted from the BART requirement. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. The exemption threshold set by the state should not be higher than 0.5 dv. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual source's impact.

The state must identify potential BART sources in its SIP, described as ''BART-eligible sources'' in the RHR, and document its BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires the state to consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. The BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the state's regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

The RHR also allows states to implement an alternative program in lieu of BART only if the alternative program can be demonstrated to achieve greater progress toward the national visibility goal than implementing BART controls. EPA made such a demonstration for CAIR under regulations issued in 2005 revising the regional haze program. 70 FR 39104 (July 6, 2005). EPA's regulations provided that states participating in the CAIR trading program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). CAIR is not applicable to emissions of PM, so states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. See *North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The court left CAIR in place until the Agency replaced it. Id. EPA replaced CAIR with the Transport Rule in August 2011.

On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would be obtained by implementing BART for SO_2 and NO_X for BART-subject EGUs in the area subject to the Transport Rule. 76 FR 82219. Based on the proposed finding, EPA also proposed to revise the RHR to allow states, including Ohio, to meet the requirements of an alternative program in lieu of BART by participation in the trading programs under the Transport Rule. EPA has not taken final action on that rule.

D. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submission to meet applicable RPGs. The LTS must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs for all Class I areas within or affected by emissions from the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to address interstate visibility issues sufficiently.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS. The seven factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

E. Coordinating Regional Haze and RAVI LTS

As part of the RHR, EPA revised 40 CFR 51.306(c), regarding the LTS for RAVI, to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze on or before this date. It must also submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must be submitted to EPA as a SIP revision and report on both regional haze and RAVI impairment.

F. Monitoring Strategy and Other Implementation Plan Requirements

40 CFR 51.308(d)(4) includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network, meaning that the state reviews and uses monitoring data from the network. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible in electronic format;
- A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year with available data, and future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements including reporting, recordkeeping, and other measures necessary to assess and report on visibility;

The RHR requires control strategies to cover an initial implementation period extending to the year 2018 with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

G. Consultation With States and Federal Land Managers (FLMS)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Ohio's regional haze plan?

Ohio submitted its regional haze plan on March 11, 2011, which included revisions to the Ohio SIP to address regional haze.

A. Class I Areas

States are required to address regional haze affecting Class I areas within a state and in Class I areas outside the state that may be affected by that state's emissions. 40 CFR 51.308(d). Ohio does not have any Class I areas within the state. Ohio reviewed technical analyses conducted by MRPO and other regional planning organizations to determine what Class I areas outside the state are affected by Ohio emission sources. MRPO conducted both a back trajectory analysis and modeling to determine the affects of its states' emissions. Ohio also used assessments by MANE–VU, the regional planning organization for Northeastern and Mid-Atlantic states and by VISTAS, the regional planning organization for Southeastern states. Finally, Ohio used a joint state assessment by Arkansas and Missouri. The conclusion from these five technical analyses is that Ohio emissions affect 15 Class I areas. The affected Class I areas are: Caney Creek and Upper Buffalo Wilderness Areas in Arkansas; Mammoth Cave in Kentucky; Acadia National Park and Moosehorn Wilderness Area in Maine; Hercules-Glades and Mingo Wilderness Areas in Missouri; Great Gulf Wilderness Area in New Hampshire; Brigantine Wilderness Area in New Jersey; Great Smoky Mountains National Park in North Carolina and Tennessee; Lye Brook Wilderness Area in Vermont; James River Face Wilderness Area and Shenandoah National Park in Virginia; and Dolly Sods/Otter Creek Wilderness Area in West Virginia. Ohio has thereby satisfied the requirement to identify the Class I areas it affects.

B. Baseline, Current, and Natural Conditions

The RHR requires Class I states to calculate the baseline and natural conditions for their Class I areas. Ohio does not have any Class I areas. Therefore, Ohio is not required to submit such calculations.

C. RPGs

Class I states must set RPGs that achieve reasonable progress toward achieving natural visibility conditions. Ohio does not have any Class I areas, so it does not need to set any RPGs. Ohio did consult with affected Class I states to ensure that it achieves its fair share of the overall emission reductions necessary to achieve the RPGs of Class I areas that it affects.

Ohio consulted with the FLMs during the development of its regional haze plan. Ohio submitted a draft of its regional haze plan to the FLMs on September 9, 2008. The FLMs provided comments on October 16, 2008. Ohio sent the FLMs a revised regional haze plan on December 29, 2008. Ohio revised its plan based on the initial comments. Ohio later held a public hearing on February 26, 2009, which also concluded the public comment. The Forest Service gave additional comments in a February 25, 2009, letter. A joint March 10, 2009, letter from the National Park Service and U.S. Fish and Wildlife Service also provided comments on Ohio's plan. Ohio has committed to continue to consult with the FLMs as it develops future SIP revisions and progress reports.

Ohio participated in meetings and on conference call with affected Class I states and RPOs. Ohio consulted with Minnesota and Michigan on their Class I areas. Ohio also participated in MRPO's inter-RPO consultations. MANE–VU, the RPO for the Northeastern states, facilitated

consultation between Ohio and Maine, New Hampshire, New Jersey, and Vermont. Ohio also consulted with Arkansas, Kentucky, Missouri, North Carolina, Tennessee, West Virginia, and Virginia.

Ohio included the MPRO technical support document (TSD) in its submission. In Section 5 of the TSD, MPRO assessed the reasonable progress using the four factors required by the RHR. The factors considered are the cost of compliance, time needed, energy and non-air impacts, and remaining useful life.

In analyzing the visibility benefits of existing programs, MPRO considered existing on-highway mobile source, off-highway mobile source, area source, power plant, and other point source programs. MPRO also included reductions from the since vacated CAIR in its analysis. Following the court vacatur of CAIR, MRPO performed an additional analysis intended to project air quality in the absence of CAIR. MPRO projected visibility in 2018 under three scenarios in this analysis. The first scenario reflected simple emissions growth from a baseline that reflects power plant emissions in 2007, prior to most of the emission controls pursuant to CAIR being installed. The second scenario added reductions for power plants controls that are enforceable under federal or state consent decrees, permits, or rules. The final scenario also added power plant controls that the utilities anticipated installing, presumably under the expectation that EPA would issue a rule to replace CAIR, plus power plant controls representing BART where applicable. The MRPO analysis showed that many Class I areas, including those impacted by Ohio, will fail to meet the 2018 RPGs with the emission reductions resulting from CAIR.

Ohio believes that implementation of the existing control measures listed in section 10 of its regional haze plan is expected to provide its fair share of emission reductions that should allow affected Class I areas to meet the RPGs. However, CAIR is one of the existing control measures and the MRPO analysis shows emission reductions equivalent to the scale of CAIR are needed to meet RPGs. Reliance on CAIR as part of a state's LTS to achieve the state-adopted RPGs is discussed in section E of this notice.

D. BART

Ohio conducted a BART analysis using the criteria in the BART Guidance at 40 CFR 51.308(e) and Appendix Y to identify all of the BART-eligible sources, assess whether the BART-eligible sources are subject to BART and determine the BART controls. These criteria are: (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) emissions unit(s) was constructed on or after August 6, 1962, and was in existence prior to August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year. Ohio initially identified 39 BART-eligible sources, including 18 EGUs and 21 other facilities. Ohio did not consider EGUs in its analysis as it chose to meet BART requirements for EGUs for SO_2 and NO_X by participation in CAIR, and because the particulate matter emissions from EGUs were found not to warrant further control. Ohio found that 12 non-EGUs remained as potential BART sources after further screening. Ohio then used the modeling protocol MRPO developed to determine the sources subject to BART. MRPO conferred with its states, EPA, and the FLMs in developing its BART modeling protocol. Consistent with EPA guidance, the state used a 0.5 dv impact (98th percentile) as the threshold for a source to contribute to visibility impairment, concluding that such a threshold provided an appropriate means of identifying which sources cause sufficient visibility impairment to warrant being subject to BART. Ohio found that just one non-EGU facility was subject to BART, P.H. Glatfelter of Ross County.

Ohio performed a five factor BART determination of the Glatfelter facility. Glatfelter added NO_X controls to both units in 2001 and 2003. Additional NO_X combustions controls are technically infeasible for tangentially fired boilers. Ohio determined that post-combustion control was unnecessary because additional NO_X reductions would have negligible visibility impact. Ohio concluded that operating the units at the current emission limits satisfies the BART requirement for NO_X.

Ohio evaluated several SO_2 control devices for the Glatfelter boilers. The BART determination process lead to narrowing the potential control devices down to three options—wet flue gas desulfurization (FGD), semi-dry FGD, and over-fire air (OFA) with a sorbent injection system (SIS). Ohio and MPRO conducted visibility modeling of the BART options. Modeling of the FGD controls indicates an average of less than one day with impairment over 0.5 dv at affected Class I sites, which does not contribute to visibility impairment. Both FGD controls are expected to achieve a 90 percent reduction in SO_2 emissions. The OFA/SIS option would reduce emissions by about 60 percent and yield modeling impacts over 0.5 dv on up to 7 days a year. Ohio selected semi-dry FGD as the BART SO_2 control, which is expected to reduce SO_2 emissions by 20,515 tons per year.

P.H. Glatfelter is subject to an alternative to BART. Ohio issued a permit on March 7, 2011, with the limitations on Glatfelter's Boilers 7 and 8. P.H. Glatfelter must operate its PM control devices, cyclones and electrostatic precipitators, and its NO_X control devices, low-NO_X burners with over-fire air, on both units. The NO_X controls are to be operated all year instead of just the May 1 to September 30 control period. P.H. Glatfelter will add a control device, use alternate fuel, use low sulfur fuel, use a combination of measures, or permanently shut down a boiler to achieve a SO_2 emission limit of 24,930 pounds per calendar day. Ohio's permit specifies that this limit is for Boilers 7 and 8 combined. Continuous emission monitor systems will be used to measure the daily SO_2 emissions. P.H. Glatfelter will comply with the alternative to BART emission limits by December 31, 2014.

EPA is proposing to approve Ohio's alternative to BART limits for P.H. Glatfelter. Ohio is requiring P.H. Glatfelter to continue operation of its PM and NO_X controls. Modeling shows negligible visibility benefit for PM reductions. The BART determination indicated that additional NO_X control is unnecessary and Glatfelter will use its controls all year long. The SO_2 emission limit of 24,930 pounds per calendar day given to Boilers 7 and 8 in the permit are slightly more stringent that what Ohio determined as BART. The semi-dry FGD that Ohio selected as the BART SO_2 control would have an emission limit of 24,931 pounds SO_2 per day for both units. EPA is satisfied with the limits because they are the as stringent as what Ohio determined to fulfill BART requirements. EPA proposes in particular to approve permit number P0103673 issued on March 7, 2011, that imposes these limitations on the P.H. Glatfelter facility.

Ohio used a cumulative modeling analysis by MRPO to determine that PM and VOC emissions will not cause or contribute to visibility impairment. The MRPO analysis of all point sources in the region showed a cumulative impact of less than 0.5 dv at any Class I area. PM and VOC emissions from just Ohio sources would be well less than from all states and even smaller when considering only 39 of those sources are BART-eligible. Ohio therefore concludes that PM and VOC emissions from its BART sources have a negligible

visibility impact. Thus, it did not consider PM or VOC reductions in its BART determinations.

E. LTS

Under Section 169A(b)(2) of the CAA and 40 CFR 51.308(d), states' regional haze programs must include an LTS for making reasonable progress toward meeting the national visibility goal. Ohio's LTS must address visibility improvement for the Class I areas impacted by Ohio sources. Section 51.308(d)(3) requires that Ohio consult with the affected states in order to develop a coordinated emission management strategy. A contributing state, such as Ohio, must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I areas affected by Ohio sources. As described in section III.E., the LTS is the compilation of all control measures Ohio will use to meet applicable RPGs. The LTS must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs for all Class I areas affected by Ohio emissions.

At 40 CFR 51.308(d)(3)(v), the RHR identifies seven factors that a state must consider in developing its LTS: (A) Emission reductions due to ongoing programs, (B) measures to mitigate impact from construction, (C) emission limits to achieve the RPG, (D) replacement and retirement of sources, (E) smoke management techniques, (F) federally enforceable emission limits and control measures, and (G) the net effect on visibility due to projected emission changes over the LTS period. Ohio considered the seven factors in developing its LTS.

Ohio relied on MPRO's modeling and analysis along with its emission information in developing an LTS. Ohio consulted with Class I states through its participation in MRPO. MRPO facilitated consultations with other Midwest states and with states in other regions through inter-RPO processes. Ohio considered the factors set out in 51.308(d)(3)(v) in developing its LTS. Based on these factors and the MRPO's technical analysis, in conjunction with RPGs that were set by the pertinent states in consultation with Ohio and other states, Ohio concludes that existing control programs adequately address Ohio's impact on Class I areas and suffice to meet their RPGs by 2018 by implementing the control programs already in place. These existing control programs include federal motor vehicle emission control program, reformulated gasoline, emission limits for area sources of VOCs, Title IV, the NO_X SIP Call, NO_X Reasonable Achievable Control Technology, Maximum Achievable Control Technology standards, and federal non-road standards for construction equipment and vehicles. These programs are fully enforceable, provide for the mitigation of new source impacts through new source permitting programs, and reflect appropriate consideration of current programs and prospective changes in emissions.

As noted in EPA's separate notice proposing revisions to the RHR (76 FR 82219, December 30, 2011), a number of states, including Ohio, fully consistent with EPA's regulations at the time, relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted RPGs. In that notice, we proposed a limited disapproval of Ohio's LTS based on its reliance on CAIR. Comments on that proposed determination may be directed to Docket ID No. EPA–HQ–OAR–2011–0729. We are proposing to find that the remaining elements of Ohio's LTS meet the requirements of the RHR.

F. Monitoring Strategy

Ohio's monitoring strategy relies on participation in the IMPROVE network. There is an IMPROVE Protocol monitoring site in Quaker City, Ohio. Ohio also runs a network of criteria pollutant monitors that provides data to analyze air quality problems including regional haze. Ohio is required under 40 CFR 51.308(d)(4) to have procedures for using the monitoring data to determine the contribution of emissions from within the state to affected Class I areas. Ohio developed procedures in conjunction with the MRPO. The procedures are detailed in the MRPO TSD. EPA finds that Ohio's regional haze plan meets the monitoring requirements for the RHR and that Ohio's network of monitoring sites is satisfactory to measure air quality and assess its contribution to regional haze.

G. Comments

Ohio took comments on its proposed regional haze plan. It held a public hearing on February 26, 2009, which concluded the public comment period. Ohio also received comments from the FLMs as part of the consultation process. Evidence of the public notice and evidence of the public hearing were submitted to EPA.

Ohio provided the comments it received and its responses in a document within its regional haze plan. Ohio revised portions of its plan in response to comments. This includes emission limits on the non-EGU BART facility being tightened from Ohio's draft plan. Ohio has satisfied the requirements from 40 CFR Part 51, Appendix V to provide evidence that it gave public notice, took comments, and that it compiled and responded to comments.

V. What action is EPA taking?

EPA is proposing a limited approval of revisions to the Ohio SIP, submitted on March 11, 2011, addressing regional haze for the first implementation period. The revisions seek to satisfy CAA and regional haze rule requirements for states to remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

EPA finds that Ohio's submission satisfies BART requirements for non-EGUs, most notably by providing new, tighter emission limits for the Glatfelter facility in Ross County, Ohio, Ohio's submission provides an approvable analysis of the emission reductions needed to satisfy reasonable progress and other regional haze planning requirements, and Ohio's submission meets other regional haze planning requirements such as identification of affected Class I areas and provision of a monitoring plan. Because for these reasons Ohio's submission helps address regional haze planning requirements, EPA is also proposing limited approval of Ohio's submission for its SIP strengthening effect.

In a separate action, EPA has previously proposed a limited disapproval of the Ohio regional haze SIP because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of CAIR. 76 FR 82219, December 30, 2011. Consequently, we are not taking action in this notice to address the state's reliance on CAIR to meet certain regional haze requirements.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 17, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–1514 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2011–0455–201131(b); FRL–9621–5]

Approval and Promulgation of Implementation Plans; North Carolina: Approval of Section 110(a)(1) Maintenance Plan for the Greensboro-Winston-Salem-High Point 1-Hour Ozone Maintenance Area To Maintain the 1997 8-Hour Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the North Carolina State Implementation Plan (SIP), submitted to EPA on April 13, 2011, with supplemental information submitted on May 18, 2011, by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources, through the Department of Air Quality. The revisions propose to modify North Carolina's SIP to address the required maintenance plan for the 1997 8-hour ozone national ambient air quality standards (NAAQS) for the Greensboro-Winston-Salem-High Point, North Carolina 1-hour ozone maintenance area, hereafter referred to as ''the Triad Area.'' The Triad Area is comprised of Davidson, Forsyth, and Guilford and a portion of Davie County. This maintenance plan was submitted to ensure the continued attainment of the 1997 8-hour ozone NAAQS through the year 2018 in the Triad Area. EPA is approving these SIP revisions pursuant to section 110 of the Clean Air Act. The submitted maintenance plan meets all of the statutory and regulatory requirements, and is consistent with EPA's guidance.

DATES: Written comments must be received on or before February 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2011–0455 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2011–0455,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Zuri Farngalo or Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Zuri Farngalo may be reached by phone at (404) 562–9152 or by electronic mail address *farngalo.zuri@epa.gov.* Jane Spann may be reached by phone at (404) 562–9029 or by electronic mail address *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION: On March 12, 2008, EPA issued a revised ozone NAAQS. *See* 73 FR 16436. The current action, however, is being taken to address requirements under the 1997 ozone NAAQS. Requirements for the Triad Area under the 2008 NAAQS will be addressed in the future.

For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.** In the Final Rules Section of this **Federal Register,** EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: January 12, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–1358 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2011–0956; FRL–9623–2]

Determination of Failure To Attain the One-Hour Ozone Standard by 2007, Determination of Current Attainment of the One Hour Ozone Standard, Determinations of Attainment of the Eight-Hour Ozone Standards for the New York-Northern New Jersey-Long Island Nonattainment Area in Connecticut, New Jersey and New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing four separate and independent determinations related to the New York-Northern New Jersey-Long Island (NY–NJ–CT) one-hour and 1997 eight-hour ozone nonattainment areas. The boundaries of the one-hour and eight-hour ozone nonattainment areas differ slightly. If EPA's determination that the area is currently attaining the eight-hour standard is finalized, EPA's ozone implementation regulation provides that the requirements for the States to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of that ozone standard shall be suspended for as long as the area continues to attain the standard. A determination of attainment does not constitute a redesignation to attainment. Redesignation requires the states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for ten years after redesignation.

DATES: Comments must be received on or before February 24, 2012. Public comments on this action are requested and will be considered before taking final action.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2011–0956, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* Werner.Raymond@epa.gov
- *Fax:* (212) 637–3901
- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2011–0956. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through www.regulations.gov your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's proposed action related to New Jersey or New York, please contact Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, New York 10008–1866, telephone number (212) 637–4249.

If you have questions concerning EPA's proposed action related to Connecticut, please contact Richard Burkhart, Air Quality Planning Unit, Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square-Suite 100, Mail Code OEP05–02, Boston, MA 02109–3912, telephone number (617) 918–1664, fax number (617) 918- 0664, email *burkhart.richard@epa.gov.*

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I. What are EPA's proposed actions?

EPA is proposing four separate and independent determinations. First, with respect to the one-hour ozone NAAQS, EPA is proposing to determine that the New York-Northern New Jersey-Long Island (NY-NJ-CT) one-hour ozone nonattainment area previously failed to attain the one-hour NAAQS by its applicable attainment deadline of November 15, 2007 (based on complete quality-assured and certified ozone monitoring data for 2005–2007). Second, and also with respect to the one-hour ozone NAAQS, EPA is proposing to determine that the area is currently attaining the one-hour standard based on complete, quality-assured and certified ozone monitoring data for 2008–2010. Preliminary ozone monitoring data for 2011 indicate the area continues to attain the one-hour ozone standard.

The third and fourth proposed determinations concern the 1997 eight-hour ozone NAAQS. EPA is proposing to determine that the NY-NJ-CT eight-hour ozone nonattainment area attained the 1997 eight-hour standard by the applicable deadline, June 15, 2010, based on complete, quality-assured and certified ozone monitoring data for 2007–2009. Finally, EPA is also proposing to determine that the area is currently attaining the 1997 eight-hour ozone standard based on complete, quality-assured and certified ozone monitoring data for 2008–2010. Preliminary data for 2011 indicate that the area continues to attain the 1997

eight-hour ozone standard. If EPA's determination that the area is currently attaining the eight-hour standard is finalized, 40 CFR 51.918 [1] of EPA's ozone implementation rule provides that the requirements for the States to submit certain reasonable further progress plans, attainment demonstrations, contingency measures and any other planning requirements of the Clean Air Act related to attainment of that standard shall be suspended for as long as the area continues to attain the standard.

In addition to these proposed determinations, EPA is intending to withdraw EPA's proposed disapprovals of the CT and NJ 1997 eight-hour ozone attainment demonstrations, which were previously published in the **Federal Register** on May 8, 2009 (74 FR 21568 and 21578), provided that EPA finalizes its proposed determination here that the area is currently attaining the 1997 eight-hour ozone standard.

In order to determine the areas' air quality status for purposes of the proposed determinations, EPA reviewed ozone monitoring air quality data from the States, in accordance with 40 CFR 50.9, 40 CFR part 50 appendix H and appendix I, and EPA policy and guidance, as well as data processing, data rounding and data completeness requirements. EPA's review is discussed at length below.

II. What is the background for these proposed actions?

The boundaries for the NY-NJ-CT one-hour and the eight-hour ozone nonattainment areas are slightly different. For the one-hour ozone NAAQS of 0.12 parts per million (ppm), the area is composed of: The Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union Counties in New Jersey; the Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester Counties and part of Orange County in New York; and parts of Fairfield and Litchfield Counties in Connecticut. The 1997 eight-hour ozone nonattainment area is composed of many of the same counties as the one-hour ozone nonattainment area but does not include Ocean County in New Jersey, any part of Orange County in New York or any part of Litchfield County in Connecticut, and does include Warren County in New Jersey, and all of Fairfield, New Haven and Middlesex Counties in Connecticut. The one-hour ozone standard designations were established by EPA following the enactment of the Clean Air Act (CAA) Amendments in 1990. Each area of the country that was designated nonattainment for the one-hour ozone NAAQS was classified by operation of law as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. (See CAA sections 107(d)(1)(C) and 181(a)). The NY-NJ-CT one-hour ozone nonattainment area was designated nonattainment and classified as severe-17, with an attainment deadline of November 15, 2007.

On July 18, 1997, (62 FR38856), EPA promulgated a new, more protective standard for ozone based on eight-hour average concentrations (the ''1997 eight-hour ozone NAAQS''). EPA designated and classified most areas of the country under the eight-hour ozone NAAQS in an April 30, 2004 final rule (69 FR 23858). The NY-NJ-CT 1997 eight-hour ozone nonattainment area was designated nonattainment and classified as moderate with an attainment deadline of June 15, 2010.

On April 30, 2004, EPA also issued a final rule (69 FR 23951) entitled ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1,'' referred to as the Phase 1 Rule. Among other matters, this rule revoked the one-hour ozone NAAQS in most other areas of the country, effective June 15, 2005. (See, 40 CFR 50.9(b); 69 FR at 23996; and 70 FR 44470 (August 3, 2005)). The Phase 1 Rule also set forth how anti-backsliding principles will ensure continued progress toward attainment of the eight-hour ozone NAAQS by identifying which one-hour ozone requirements remain applicable in an area after revocation of the one-hour ozone NAAQS.

Although EPA revoked the one-hour ozone standard (effective June 15, 2005), eight-hour ozone nonattainment areas remain subject to certain one-hour anti-backsliding requirements based on their one-hour ozone classification. Initially, EPA's rules to address the transition from the one-hour to the eight-hour ozone standard did not include one-hour contingency measures or major source penalty fee programs among the measures retained as one-hour ozone anti-backsliding requirements.[2] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements (and certain others not relevant here) from its anti-backsliding requirements. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review). Thus, the Court vacated the provisions that excluded these requirements. As a result, states must continue to meet the obligations for one-hour ozone NAAQS contingency measures. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the one-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

III. What is the rationale for and effect of these proposed determinations?

A. One-Hour Ozone Determinations

After revocation of the one-hour ozone standard, EPA must continue to provide a mechanism to give effect to the one-hour anti-backsliding requirements. See *South Coast* v. *EPA,* 47 F.3d 882, at 903. In keeping with this responsibility with respect to one-hour anti-backsliding contingency measures and section 185 fee programs for the NY-NJ-CT one hour ozone area, EPA proposes to determine that the NY-NJ-CT area failed to attain the one-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the *South Coast* court decision, upon revocation of the one-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the one-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here—that the area did not attain the one-hour ozone standard by the November 15, 2007 deadline (based on data for 2005–2007) is linked solely to two required one-hour anti-backsliding measures: i.e., one-hour contingency measures for failure to attain under section 172(c)(9), and fee programs under sections 182(d)(3), 182(f) and 185.

A final determination of failure to attain by the area's 2007 attainment date will not result in reclassification of the area under the revoked one-hour standard. As a severe one-hour nonattainment area, the NY-NJ-CT area is not subject to reclassification for the one-hour standard, and in any event EPA is no longer required to reclassify

[1] CFR refers to the Code of Federal Regulations, in this case Title 40 part 51.

[2] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1, 69 FR 23951 (April 30, 2004).

any area to a higher classification for the one-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. 40 CFR 51.905(e)(2)(i)(B).

EPA's proposed determination that the area failed to attain the one-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two one-hour ozone anti-backsliding requirements whose implementation is triggered by a finding of failure to attain by the applicable attainment date: Section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

With respect to the one-hour ozone anti-backsliding requirement for contingency measures, EPA has previously approved all of the States' one-hour ozone attainment demonstrations, reasonable further progress plans, and contingency plans for this area. See 67 FR 5152 (February 4, 2002) for New Jersey, 67 FR 5170 (February 4, 2002) for New York, and 66 FR 63921 (December 11, 2001) for Connecticut.

Moreover, EPA is also proposing a separate and independent one-hour ozone determination—that the NY-NJ-CT area currently attains the one-hour ozone standard, based on complete, quality-assured and certified ozone data for 2008–2010, and preliminary data available for 2011. If this determination is finalized, then even if EPA finalizes its proposed determination that the area failed to attain by the 2007 deadline, it will not result in any one-hour ozone contingency measure obligations for the area. Under EPA's ''Clean Data Policy'' interpretation, which was first articulated for the one-hour standard and then codified for the eight-hour ozone standard (40 CFR 51.918),[3] a determination of attainment suspends obligations for attainment-related requirements for that standard, including contingency measures. See, for example, determination of one-hour ozone attainment for Baton Rouge, 75 FR 6570 (February 10, 2010). With respect to the one-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section 185. Section 185 requires one-hour ozone SIPs for severe areas to provide that, if the area has failed to attain by the attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee to the state. Thus a final determination of failure to attain by the area's one-hour attainment date would trigger the one-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3), 182(f) and 185, unless that obligation is terminated.

B. Eight-Hour Ozone Determinations

EPA proposes to determine, in accordance with section 181(b)(2), that the NY-NJ-CT area attained the 1997 eight-hour ozone standard by the applicable deadline for that standard, June 15, 2010. This proposed determination is based on complete, quality-assured and certified data for 2007–2009. If EPA finalizes this determination, the area will be not be reclassified, there will be no obligation with respect to contingency measures for failure to attain by the attainment deadline, nor any other consequence that would have resulted had the area failed to attain by its attainment date.

In addition, EPA is separately and independently proposing to determine that the NY-NJ-CT area is currently attaining the 1997 eight-hour ozone standard, based on complete quality-assured and certified data for 2008–2010 and preliminary data for 2011 that indicate continued attainment. EPA's ozone implementation rule at 40 CFR 51.900–918, promulgated under sections 172 and 182 of the Clean Air Act, describes the Clean Air Act requirements for areas designated nonattainment for the 1997 eight-hour ozone standard. For areas that attain the standard, section 51.918 of the implementation rule provides that, upon a determination of attainment by EPA, the requirements for a state to submit certain required planning SIPs related to attainment of the eight-hour NAAQS, such as attainment demonstrations, reasonable further progress (RFP) plans[4] and contingency measures, shall be suspended. EPA's action only suspends the requirements to submit the SIP revisions discussed above.[5]

EPA is also intending to withdraw our previous proposed disapprovals of the ozone attainment demonstrations submitted by Connecticut and New Jersey for the NY–NJ–CT eight-hour ozone nonattainment area, provided that EPA finalizes its proposed determination that the area is currently attaining the 1997 eight-hour ozone standard.

IV. How does EPA compute whether an area complies with the one-hour ozone standard?

Although the one-hour ozone NAAQS as promulgated in 40 CFR 50.9 includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the one-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard, which is 0.12 ppm. 40 CFR 50.9(a) states that: ''The level of the national one-hour primary and secondary ambient air quality standards for ozone * * * is 0.12 parts per million. * * * The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million * * * is equal to or less than 1, as determined by appendix H to this part.'' Thus, compliance with the NAAQS is based on comparison of air quality concentrations with the standard and on how many days that standard has been exceeded, adjusted for the number of missing days.

For comparison with the NAAQS, EPA has clearly communicated the data handling conventions for the one-hour ozone NAAQS in guidance documents. As early as 1979, EPA issued guidance stating that the level of our NAAQS

[3] The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the one-hour standard. *See NRDC* v. *EPA*,571 F.3d 1245 (D.C. Cir. 2009); *Sierra Club* v. *EPA,* 99 F. 3d 1551 (10th Cir.1996); *Sierra Club* v. *EPA,* 375 F.3d 537(7th Cir. 2004) and *Our Children's Earth Foundation* v. *EPA,* No. 04–73032 (9thCir. June 28, 2005) (memorandum opinion).

[4] EPA approved the RFP plan for New Jersey on May 15, 2009 (74 FR 22837) and the RFP plan for New York on August 18, 2011 (76 FR 51264). EPA proposed approval of the RFP plan for Connecticut on September 20, 2010 (75 FR 57221).

[5] A determination that the area is currently attaining the 1997 eight-hour ozone standard is not equivalent to a redesignation of the area to attainment for that standard. Attainment of the ozone NAAQS is only one of the criteria set forth in CAA section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated, the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of section 107(d)(3)(E), including a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and a fully-approved SIP meeting all of the applicable requirements under section 110 and part D and a fully-approved maintenance plan for the 1997 eight-hour ozone standard. If, however, the determination of current attainment for the 1997 eight-hour standard is finalized, and EPA subsequently determines after notice and comment rulemaking in the **Federal Register** that the area has violated the standard, the basis for the suspension of these requirements for the area would no longer exist, and the area would thereafter have to address the pertinent submission requirements within a reasonable period of time. EPA would establish that time period, taking into account the circumstances surrounding the particular submissions at issue.

dictates the number of significant figures to be used in determining whether the standard was exceeded. The stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. (See, ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/4–79–003, OAQPS No. 1.2–108, January 1979.) EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19106, 19111 (April 17, 2003), 68 FR 62041, 62043 (October 31, 2003), and 69 FR 21717, 21720 (April 22, 2004). Then, EPA determines attainment status under the one-hour ozone NAAQS on the basis of the annual average number of expected exceedances of the NAAQS over a three-year period. (See, 60 FR 3349 (January 17, 1995) and see, also, ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13498, 13506 (April 16, 1992) (''General Preamble'')). EPA's determination is based upon data that has been collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality System (AQS) database, (formerly known as the Aerometric Information Retrieval System (AIRS)). To account for missing data, the procedures found in appendix H to 40 CFR part 50 are used to adjust the actual number of monitored exceedances of the standard to yield the annual number of expected exceedances (''expected exceedance days'') at an air quality monitoring site. EPA determines whether an area has attained the one-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., ''average number of expected exceedance days'') during the applicable 3-year period. See, generally, the General Preamble, 57 FR 13498, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors, ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' February 3, 1994. The term ''exceedance'' is used throughout this document to describe a daily maximum ozone measurement that is equal to or exceeds 0.125 ppm which is the level of the standard after rounding. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 days of expected exceedances occur at the same monitor. For more information please refer to 40 CFR 50.9 ''National one-hour primary and secondary ambient air quality standards for ozone'' and ''Interpretation of the 1–Hour Primary and Secondary National Ambient Air Quality Standards for Ozone'' (40 CFR part 50, appendix H).

V. How does EPA compute whether an area complies with the 1997 eight-hour ozone standard?

An area achieves attainment of the eight-hour ozone standard when an area's monitoring sites all have a design value of less than 0.085 ppm, calculated as described in 40 CFR part 50, Appendix I. The design value is the average of each year's fourth highest concentration, over a three year period, as described in Appendix I to 40 CFR part 50. From 40 CFR part 50, Appendix I, Section 2.2:

> The standard-related summary statistic is the annual fourth-highest daily maximum eight-hour average ozone concentration, expressed in parts per million, averaged over three years. The 3-year average shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements described in this appendix. The computed 3-year average of the annual fourth-highest daily maximum eight-hour average ozone concentrations shall be expressed to three decimal places (the remaining digits to the right are truncated.)

This proposed action addresses only the 1997 eight-hour ozone standard, and does not address the ozone standard that EPA established in 2008, or any future ozone standard. This proposed action does not affect and is not affected by future air quality designations for the 2008 ozone standard.

VI. What are EPA's analyses of data regarding attainment of the one-hour and 1997 eight-hour ozone standards in the NY-NJ-CT areas?

New York, New Jersey, and Connecticut submitted requests for EPA to make ''Clean Data'' determinations regarding whether the NY-NJ-CT area is currently attaining both the one-hour and eight-hour ozone standards. These requests were dated June 16, 2011, January 19, 2011, and April 29, 2011, respectively. These requests, and EPA's proposed determinations, are based upon complete, quality-assured, certified ambient air monitoring data. These data are summarized in the tables below, along with EPA's evaluation of whether these areas are currently attaining the one-hour ozone and eight-hour ozone NAAQS. In addition, EPA evaluated the data to determine whether the area attained the one-hour ozone standard by the applicable deadline for that standard (November 15, 2007), and whether the area met its 1997 eight-hour ozone attainment deadline (June 15, 2010). All of the data on which EPA has based its evaluations are also available to the public through the **FOR FURTHER INFORMATION CONTACT** section and via *www.epa.gov/ttn/airs/airsaqs/.*

A. Data for the One-Hour Ozone Standard

For the time periods 2005–2007 through 2008–2010, Table 1 shows the average number of expected one-hour ozone exceedances per year for each ozone monitor in the NY-NJ-CT ozone nonattainment area. The standard for the one-hour ozone NAAQS is 0.12 ppm and attainment is achieved when the number of expected exceedances is 1.0 or less averaged over a three year period. The data for 2005–2007 show that the area did not attain the one-hour ozone standard by the applicable attainment date of November 15, 2007, since the area maximum expected exceedance rate is above 1.0. The data for 2008–2010, however, show that the area is now attaining the one-hour ozone standard, since the area maximum expected exceedance rate is below 1.0. Preliminary data available for 2011 indicate that the area continues to attain the one-hour ozone standard.

TABLE 1—ONE-HOUR OZONE DATA FOR THE NY-NJ-CT OZONE MONITORS

Monitor information			Average number of expected exceedance days per year			
State	Monitor name, county	AQS ID	2005–2007	2006–2008	2007–2009	2008–2010
CT	Greenwich, Fairfield Co	090010017	1.3	1.3	0.3	0.3
CT	Danbury, Fairfield Co	090011123	3.0	1.3	1.0	0.0
CT	Stratford, Fairfield Co	090013007	1.4	1.4	0.3	0.3
CT	Westport, Fairfield Co	090019003	1.3	1.3	0.3	0.3

TABLE 1—ONE-HOUR OZONE DATA FOR THE NY-NJ-CT OZONE MONITORS—Continued

Monitor information			Average number of expected exceedance days per year			
State	Monitor name, county	AQS ID	2005–2007	2006–2008	2007–2009	2008–2010
NJ	Teaneck, Bergen Co	340030005	*	*	*	*
NJ	Leonia, Bergen Co	340030006	*	*	*	0.0
NJ	Newark-Fire House, Essex Co	340130003	*	*	*	*
NJ	Bayonne, Hudson Co	340170006	0.3	0.0	0.0	0.0
NJ	Flemington, Hunterdon Co	340190001	0.3	0.3	0.3	0.0
NJ	Rutgers University, Middlesex Co	340230011	1.3	0.7	0.0	0.0
NJ	Monmouth University, Monmouth Co	340250005	0.3	0.0	0.0	0.0
NJ	Chester, Morris Co	340273001	0.0	0.0	0.0	0.0
NJ	Colliers Mills, Ocean Co	340290006	0.7	0.0	0.0	0.0
NJ	Ramapo, Passaic Co	340315001	0.0	0.0	0.0	0.0
NY	Botanical Gardens/Harding Lab, Bronx Co	360050083	*	*	*	*
NY	IS 52, Bronx Co	360050110	0.0	0.0	0.0	0.0
NY	Botanical Gardens/Pfizer Lab, Bronx Co	360050133	*	*	0.0	0.0
NY	CCNY, New York Co	360610135	*	*	0.0	0.0
NY	Queens College II, Queens Co	360810124	0.0	0.0	0.0	0.0
NY	Susan Wagner, Richmond Co	360850067	0.3	0.0	0.0	0.3
NY	Rockland County, Rockland Co	360870005	*	*	*	*
NY	Babylon, Suffolk Co	361030002	1.4	1.0	0.0	0.4
NY	Riverhead, Suffolk Co	361030004	1.4	1.7	0.7	0.7
NY	Holtsville, Suffolk Co	361030009	*	1.2	0.0	0.0
NY	White Plains, Westchester Co	361192004	1.7	1.8	1.4	0.4
Highest Maximum Expected Exceedance Rate for each 3-year Period			3.0	1.8	1.4	0.7

Source: EPA Air Quality System (AQS) Database.

*EPA calculates the expected exceedances based on the number of times a site exceeds the 0.12 ppm standard averaged over a three-year period and adjusted for any missing data. These sites have less than 3 years worth of data because they are either new monitors or relocated monitors, due to building closures or other access issues. However, the monitoring network remains adequate because any actual exceedances that might have occurred at these sites would still be included in the above table, although none occurred during the time periods examined.

B. Data for the 1997 Eight-Hour Ozone Standard

Table 2 shows the design values (DV) by county (i.e., the 3-year average of annual 4th highest maximum eight-hour average ozone concentrations) for the 1997 eight-hour ozone NAAQS for the NY–NJ–CT ozone nonattainment area monitors for the years 2007 through 2010. The standard for the 1997 eight-hour ozone NAAQS is 0.08 ppm. A monitor with a design value of 0.084 ppm or less is meeting the 1997 eight-hour ozone NAAQS.

TABLE 2—HIGHEST DESIGN VALUES (DV) IN PARTS PER MILLION (PPM) BY COUNTY FOR THE 1997 EIGHT-HOUR OZONE NAAQS FOR THE NY-NJ-CT MONITORS

County	2007–2009 DV	2008–2010 DV
NEW YORK:		
Bronx	0.073	0.072
New York	*	0.073
Queens	0.074	0.074
Richmond	0.074	0.075
Rockland	*	*
Suffolk	0.084	0.084
Westchester	0.083	0.077
NEW JERSEY:		
Bergen	*	0.076
Essex	*	*
Hudson	0.080	0.077
Hunterdon	0.081	0.078
Middlesex	0.080	0.078
Monmouth	0.081	0.080
Morris	0.079	0.075
Passaic	0.076	0.074
CONNECTICUT:		
Fairfield	0.084	0.081
Middlesex	0.081	0.077
New Haven	0.081	0.076
Nonattainment Area (highest)	0.084	0.084

*EPA calculates the design value based on 3 consecutive years of complete (75 percent or more data capture per year) monitored data. These sites have less than 3 years worth of data because they are either new monitors or relocated monitors, due to building closures or other access issues.

In this case, all of the monitoring sites had a design value less than 0.085 ppm based on the 2007–2009 monitoring period, thus showing that the area met its June 15, 2010 deadline to attain the 1997 eight-hour ozone standards. The data in Table 2 show that the monitoring design values remained below 0.085 through 2008–2010. Preliminary 2011 air quality data indicate the area continues to attain the 1997 eight-hour ozone standard.

VII. Proposed Actions

For the reasons set forth in this action, EPA is proposing four separate and independent determinations related to the NY-NJ-CT one-hour and 1997 eight-hour ozone nonattainment areas. These determinations are based upon complete, quality-assured and certified ozone monitoring data. First, with respect to the one-hour ozone standard, and pursuant to EPA's authority to ensure implementation of one-hour ozone anti-backsliding requirements and CAA section 301, EPA is proposing to determine that data for 2005–2007 show that the NY-NJ-CT area previously failed to attain the one-hour standard by its applicable November 15, 2007 attainment deadline. Second, however, EPA is proposing to determine that the NY-NJ-CT area is currently attaining the one-hour ozone standard, based on more recent 2008–2010 data and preliminary data for 2011. These proposed determinations regarding the one-hour standard, if finalized, would bear on the area's obligation with respect to one-hour anti-backsliding requirements for section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) and 185 major stationary source fee programs.

Third, with respect to the 1997 eight-hour ozone standard, in accordance with section 181(b) of the CAA, EPA proposes to determine that data for 2007–2009 show the NY-NJ-CT eight-hour ozone nonattainment area attained the 1997 eight-hour ozone standard by its June 15, 2010 attainment deadline. Fourth, EPA is also proposing to determine that the NY-NJ-CT eight-hour ozone nonattainment area currently continues to attain the eight-hour ozone NAAQS, based on data for 2008–2010 and preliminary data for 2011.

As provided in 40 CFR 51.918, if EPA's determination that the area has attained the eight-hour ozone standard is made final, it would suspend the requirements under section 182(b)(1) for submission of the attainment demonstration, reasonable further progress plan, contingency measures and any other planning SIP relating to attainment of the 1997 eight-hour NAAQS. This suspension of requirements would be effective as long as the area continues to attain the 1997 eight-hour ozone standard.

EPA's proposed determination that the area is currently attaining the 1997 eight-hour ozone NAAQS is contingent upon continued monitoring and continued attainment of that NAAQS. If the determination that the area is currently attaining the 1997 eight-hour ozone NAAQS is finalized and EPA subsequently determines, after notice and comment rulemaking, that the area has subsequently violated the standard, the basis for the suspension of obligations with respect to 1997 eight-hour ozone attainment-related planning requirements would no longer exist, and the area would thereafter have to address the pertinent requirements.

It is EPA's intent to withdraw the May 8, 2009 proposed disapprovals of Connecticut's and New Jersey's eight-hour ozone attainment demonstrations for the NY-NJ-CT eight-hour ozone nonattainment area, provided that EPA finalizes its determination that the area currently attains the 1997 eight-hour ozone standard.

EPA is soliciting public comments on the issues discussed in this action. EPA will consider these comments before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to EPA as discussed in the **ADDRESSES** section of this **Federal Register**.

VIII. Statutory and Executive Order Reviews

These actions include proposals to make attainment determinations based on air quality, and would if finalized, result in the suspension of certain Federal requirements, would not impose additional requirements beyond those imposed by state law, or would not impose any requirements beyond those required by Federal statute.

For these reasons, these proposed actions:

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: December 8, 2011.

Judith A. Enck,

Regional Administrator, Region 2.

Dated: January 11, 2012.

H. Curtis Spalding,

Regional Administrator, Region 1.

[FR Doc. 2012–1518 Filed 1–24–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2010–1075; FRL–9335–4]

RIN 2070–AB27

Proposed Significant New Use Rules on Certain Chemical Substances; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA issued a proposed rule in the **Federal Register** of December 28, 2011, concerning proposed significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substances rutile, tin zinc, calcium-doped (CAS No. 389623–01–2) and rutile, tin zinc, sodium-doped (CAS No. 389623–07–8) which were the subject of premanufacture notices (PMNs P–06–36 and P–06–37) and TSCA section 5(e) consent orders issued by EPA. In order to address public comments, EPA is extending the comment period. This document extends the comment period for 30 days, from January 27, 2012 to February 26, 2012.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPPT–2010–1075, must be received on or before February 26, 2012.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of December 28, 2011.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** of December 28, 2011 (76 FR 81441) (FRL–9329–4). In that document, EPA proposed SNURs under section 5(a)(2) of TSCA for the chemical substances rutile, tin zinc, calcium-doped (CAS No. 389623–01–2) and rutile, tin zinc, sodium-doped (CAS No. 389623–07–8) which were the subject of premanufacture notices (PMNs P–06–36 and P–06–37) and TSCA section 5(e) consent orders issued by EPA. EPA received a comment in response to the proposed SNURs noting that additional information detailing the Agency's evaluation and determination under TSCA sections 5(e)(1)(A)(i) and 5(e)(1)(A)(ii)(I) for the chemical substances was added to the docket. The commenter requests that additional time be allotted to allow review of this information. EPA is hereby extending the comment period, which was set to end on January 27, 2012, to February 26, 2012 to allow for any public comments in response to the additional information.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the December 28, 2011 **Federal Register** document. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: January 18, 2012.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2012–1520 Filed 1–24–12; 8:45 a.m.]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA–2011–0099]

RIN 2127–AK76

Tire Fuel Efficiency Consumer Information Program

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

ACTION: Notice of public workshop and agenda.

SUMMARY: On March 30, 2010, NHTSA published a final rule specifying the test methods to be used for a new tire fuel efficiency consumer information program (TFECIP) to measure three aspects of tire performance: Rolling resistance, wet traction, and treadwear. The final rule did not include any of the requirements for the consumer information and education portions of the TFECIP. Instead, NHTSA announced that, based on the comments the agency had received on the proposal that preceded its final rule, it had decided to conduct additional research before issuing a new proposal for these requirements. NHTSA hopes to issue this new proposal in 2012; however, it has decided that it would be helpful to have a public workshop to obtain feedback on some issues that either have proved difficult to explore effectively in the research NHTSA has conducted or have arisen since the publication of the March 2010 final rule.

NHTSA invites interested parties to submit written comments and to participate in a public workshop using the instructions set forth in this notice. As described in the Procedural Matters section of this notice, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To facilitate discussion, NHTSA has placed documents concerning research NHTSA has finalized since the March 2010 final rule in the docket. NHTSA will consider the public comments received in developing the new proposal regarding the remaining aspects of the TFECIP.

DATES: *Public Workshop:* The public workshop will be held on Friday, February 3, 2012 from 10 a.m. to 5 p.m. at the San Francisco Federal Building, 90 7th Street, San Francisco, CA 94013. NHTSA notes that all persons attending the workshop will need to clear security before entering the meeting room and should plan their arrival time accordingly. If you wish to attend or speak at the workshop, you must register in advance no later than Friday, January 27, 2012, by following the instructions in the Procedural Matters section of this notice. NHTSA will consider late registrants to the extent time and space allows, but NHTSA cannot ensure that late registrants will be able to speak at the workshop.

Comments: NHTSA must receive written comments by Friday, February 17, 2012.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at 1–(800) 647–5527.

Note that all comments received, including any personal information,

will be posted without change to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Mary Versailles, Telephone: 1–(202) 366–2057, Office of International Vehicle, Fuel Economy and Consumer Standards, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Email: *mary.versailles@dot.gov.*

SUPPLEMENTARY INFORMATION: On June 22, 2009, NHTSA published a notice of proposed rulemaking (NPRM) proposing a new consumer information program for replacement tires (74 FR 29542; Docket No. NHTSA–2008–0121). The new consumer information program responded to a requirement in the Energy Independence and Security Act of 2007 (EISA; Pub. L. 110–140, 121 Stat. 1492 (Dec. 18, 2007)), that directed NHTSA to develop a national tire fuel efficiency rating system and consumer education program for replacement tires. The program would inform consumers about the effect of tires on fuel efficiency, safety and durability.

On March 30, 2010, NHTSA published a final rule specifying the test methods to be used for a new tire fuel efficiency consumer information program (TFECIP) to measure three aspects of tire performance: rolling resistance, wet traction, and treadwear (75 FR 15894; Docket No. NHTSA–2010–0036). The final rule did not include any of the requirements for the consumer information and education portions of the TFECIP. Instead, NHTSA announced that, based on the public comments the agency had received on its NPRM, it had decided to conduct additional research before issuing a new proposal for these requirements. NHTSA hopes to issue this new proposal in 2012; however, it has decided that it would be helpful to have a public workshop to obtain feedback on some issues that either have proved difficult to effectively explore in the research NHTSA has conducted or have arisen since the publication of the March 2010 final rule.

While NHTSA welcomes the presentation of any information that interested parties believe will assist NHTSA in issuing the supplemental notice of proposed rulemaking (SNPRM), NHTSA is particularly interested in presentations that address the following topics:

1. *Rolling Resistance Coefficient (RRC) versus Rolling Resistance Force (RRF).* NHTSA's original proposal based the fuel efficiency rating on RRF. NHTSA received numerous comments expressing the belief that the rating should be based on RRC. NHTSA would welcome any new or additional information on this issue.

2. *Experience in Other Countries.* At the time of the previous rulemaking, NHTSA was aware of work by Europe and Japan to implement similar rating systems. NHTSA is aware that the Republic of Korea has adopted a rating system since then. NHTSA would welcome a discussion of any experience that interested parties have had with the implementation of these other systems.

3. *Laboratory Alignment.* In the March 2010 final rule, NHTSA indicated that, because the ISO had not yet specified a reference lab for the ISO 28580 test procedure, NHTSA would specify one or more laboratories to operate the reference test machine(s) for the TFECIP. This would allow tire manufacturers to know the identity of the machine against which they would correlate their test results. While this is still NHTSA's plan, it is aware that questions exist concerning whether or not it is possible to meet the sigma requirements specified in the ISO regulation. NHTSA is also aware that other countries have adopted or are exploring other options. NHTSA has begun discussing other options and is interested in any recommendations interested parties may have. In particular, NHTSA would be interested in any experience with efforts to address lab-to-lab variability under the ISO 28580 procedure.

4. *Future Production.* To assist with estimating the potential benefits of the rule and with defining the rating ranges, NHTSA would be interested in any information manufacturers would be willing to share about how tires are likely to change in the future because of this pending regulation and any other new regulations. See the Procedural Matters section on how this information could be submitted confidentially.

Procedural Matters: The workshop will be open to the public with advanced registration for seating on a space-available basis. Individuals wishing to register to assure a seat in the public seating area should provide their name, affiliation, phone number, and email address to Ms. Mary Versailles using the contact information in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice no later than Friday, January 27, 2012. Should it be necessary to cancel the workshop due to an emergency or some other reason, NHTSA will take all available means to notify registered participants by email or telephone.

The workshop will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Ms. Mary Versailles using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above no later than Friday, January 27, 2012. Any written materials NHTSA presents at the workshop will be available electronically on the day of the workshop to accommodate the needs of the visually impaired. A transcript of the workshop will be created, however speakers may also submit materials to the docket for the record.

How long will I have to speak at the public workshop?

Once NHTSA learns how many people have registered to speak at the public workshop, NHTSA will allocate an appropriate amount of time to each participant, allowing time for lunch and necessary breaks throughout the day. For planning purposes, each speaker should anticipate speaking for approximately ten minutes, although we may need to adjust the time for each speaker if there is a large turnout. To accommodate as many speakers as possible, NHTSA prefers that speakers not use technological aids (e.g., audio-visuals, computer slideshows). However, if you plan to do so, you must let Ms. Mary Versailles know by Friday, January 27, 2012, using the contact information in the **FOR FURTHER INFORMATION CONTACT** section above. You also must make arrangements to provide your presentation or any other aids to NHTSA in advance of the workshop in order to facilitate set-up.

How do I prepare and submit written comments?

It is not necessary to attend or to speak at the public workshop to be able to comment on the issues. NHTSA invites the submission of written comments, which the agency will consider in preparing its SNPRM. Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number at the beginning of this notice in your comments.

Your primary comments may not exceed 15 pages. However, you may attach supporting documents to your primary comments. There is no limit to the length of the attachments.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** at 65

FR 19477, April 11, 2000, or you may visit *http://www.regulations.gov.*

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, or submit them electronically, in the manner described at the beginning of this notice.

Will the agency consider late comments?

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES.** To the extent the rulemaking schedule allows, NHTSA will try to consider comments that Docket Management receives after that date, but we cannot ensure that we will be able to do so.

Please note that even after the comment closing date we will continue to file relevant information in the docket as it becomes available. Further, some commenters may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

Rulemaking Analyses and Notices

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. Executive Order 12866 defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the potential impact of this rulemaking under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This document invites interested parties to submit written comments and participate in a public meeting on topics related to the development of a SNPRM that will propose requirements for the consumer information and education portions of the Tire Fuel Efficiency Consumer Information Program. We cannot now determine how the costs and benefits of the yet-to-be-developed supplemental proposal might differ from those described in the Preliminary Regulatory Impact Analysis that accompanied the June 22, 2009, NPRM. (Docket No. NHTSA–2008–0121–0015.) A full analysis of the costs and benefits will be released with the SNPRM.

Other Analyses

Because we have not yet determined the requirements that will be proposed in the SNPRM, it would be premature to conduct any analyses pursuant to the applicable requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, Executive Order 13132 (Federalism), Executive Order 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act, the Paperwork Reduction Act, Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks), the National Technology Transfer and Advancement Act, and Executive Order 13211(Energy Effects). We will provide all necessary analyses pursuant to these regulatory requirements in the SNPRM.

Issued: January 19, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–1525 Filed 1–20–12; 4:15 pm]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 77, No. 16

Wednesday, January 25, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0119]

Notice of Request for Extension of Approval of an Information Collection; Plant Pest, Noxious Weed, and Garbage Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with plant pest, noxious weed, and garbage regulations.

DATES: We will consider all comments that we receive on or before March 26, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0119–0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0119, 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–2011–0119* 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: For information regarding plant pest, noxious weed, and garbage regulations, contact Dr. Shirley Wager-Pagé, Chief, Pest Permit Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8453. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Plant Pest, Noxious Weed, and Garbage Regulations.

OMB Number: 0579–0054.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to prohibit the importation and interstate movement of plants, animals, plant and animal products, noxious weeds, and other articles to prevent the introduction into and dissemination within the United States of plant and animal pests and diseases and noxious weeds.

In connection with this mission, APHIS regulates the importation and interstate movement of plant pests, noxious weeds, and waste material derived from plant or animal matter (commonly referred to as garbage) under 7 CFR parts 330 and 360 and 9 CFR part 94.

These regulations contain information collection requirements, including requirements to apply for permits to import regulated articles (e.g., plant pests, noxious weeds, or soil) or to move regulated articles interstate, requirements for facilities to be approved by APHIS to dispose of regulated garbage, and requirements for any person engaged in the business of handling or disposing of regulated garbage to first enter into a compliance agreement with APHIS. These requirements are necessary to ensure that importation and interstate movement of regulated articles, and disposal of regulated garbage, occur under appropriate conditions to prevent the dissemination of plant and animal pests and diseases and noxious weeds.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.505420017 hours per response.

Respondents: Importers and shippers of plant pests, noxious weeds, and other regulated articles; State plant health officials; owners/operators of regulated garbage-handling facilities.

Estimated annual number of respondents: 25,755.

Estimated annual number of responses per respondent: 1.414832071.

Estimated annual number of responses: 36,439.

Estimated total annual burden on respondents: 18,417 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 18th day of January 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–1308 Filed 1–24–12; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, February 3, 2012; 9:30 a.m. EST.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda

II. Approval of the January 13, 2012 Meeting Minutes

III. Program Planning Update and discussion of projects

- OGC Clarification on Administration of Justice

IV. Management and Operations

- Staff Director's report
- Chief of Regional Programs' report

V. State Advisory Committee Issues

- Re-chartering the Indiana SAC
- Review of two Hawaii SAC applicants

VI. Adjourn Meeting

Briefing Agenda

This briefing is open to the public.

Topic: Redistricting and the 2010 Census: Enforcing Section 5 of the VRA.

I. Introductory Remarks by Chairman

II. Panel I: Speakers' Remarks

III. Panel I: Questions from Commissioners and Staff Director

IV. Panel II: Speakers' Remarks

V. Panel II: Questions from Commissioners and Staff Director

VI. Adjourn Briefing

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: January 23, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–1602 Filed 1–23–12; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 25, 2012.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 2010, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) for the period September 1, 2009, through August 31, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 66349 (October 28, 2010). On October 7, 2011, we published in the **Federal Register** the preliminary results of this review. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 76 FR 62349 (October 7, 2011) (*Preliminary Results*).[1] The final results of this review are currently due no later than February 4, 2012.

Extension of Time Limit of the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (Act) requires the Department to issue the final results of a review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to evaluate the arguments and submissions made by interested parties following the *Preliminary Results.* Therefore, we are fully extending the time limit for the final results by 60 days, to April 4, 2012, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 17, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–1529 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] In publishing the *Preliminary Results,* the **Federal Register** distorted the title of the notice; a correction of the title published in 76 FR 65497 (October 21, 2011).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–824]

Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 25, 2012.

FOR FURTHER INFORMATION CONTACT: Toni Page, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1398.

Background

On July 1, 2011, the Department of Commerce (Department) published a notice of opportunity to request an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet and strip from India covering the period July 1, 2010, through June 30, 2011. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609, 38610 (July 1, 2011). The Department received a timely request from Petitioners[1] for an AD administrative review of five companies: Ester Industries Limited (Ester), Garware Polyester Ltd. (Garware), Jindal Poly Films Limited of India (Jindal), Polyplex

[1] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc.

Corporation Ltd. (Polyplex), and SRF Limited (SRF). The Department also received timely requests for an AD review from Vacmet India Ltd. (Vacmet) and Polypacks Industries of India (Polypacks). On August 26, 2011, the Department published a notice of initiation of administrative review with respect to Ester, Garware, Jindal, Polyplex, SRF, Vacmet, and Polypacks. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011). On August 23, 2011, Vacmet and Polypacks withdrew their requests for a review. The Department published a rescission, in part, of the AD administrative review with respect to Vacmet and Polypacks on September 20, 2011. *See Polyethylene Terephthalate Film, Sheet and Strip From India: Rescission, In Part, of Antidumping Duty Administrative Review,* 76 FR 58244 (September 20, 2011). On November 25, 2011, Petitioners withdrew their request for AD administrative reviews of Ester and Garware.

Rescission, in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Petitioners' withdrawal was submitted within the 90-day period and thus is timely.[2] Because Petitioners' withdrawal of their requests for review is timely and because no other party requested a review of Ester and Garware, we are rescinding this review with respect to these companies, in accordance with 19 CFR 351.213(d)(1). The administrative review of Jindal, Polyplex, and SRF continues.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Subject merchandise of Ester and Garware will be assessed antidumping duties at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this notice.

[2] The 90th day fell on November 24, 2011, a non-business day. Pursuant to 19 CFR 351.303(b), if an applicable due date falls on a non-business day, the Department will accept as timely a document that is filed on the next business day.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 19, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–1530 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812, A–583–849]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam and Taiwan: Initiation of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 25, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand at (202) 482–3207 (the Socialist Republic of Vietnam (''Vietnam'')), or Scot Fullerton at (202) 482–1386 (Taiwan), AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Petitions

On December 29, 2011, the Department of Commerce (the ''Department'') received antidumping duty (''AD'') petition concerning imports of steel wire garment hangers from Vietnam and Taiwan filed in proper form on behalf of M&B Metal Products Company, Inc.; Innovative Fabrication LLC/Indy Hanger; and US Hanger Company, LLC (collectively, ''Petitioners'').[1] [2] On January 5, 2012, the Department issued a request for additional information and clarification of certain areas of the Petitions. On January 10, 2012, Petitioners filed a response with respect to general questions about information in the Petitions (''Supplement to the AD/CVD Petitions''). On January 11, 2012, Petitioners also filed responses specific to the Vietnam and Taiwan AD Petition (hereinafter, ''Supplement to Vietnam Petition,'' and ''Supplement to the Taiwan Petition,'' respectively). On January 11, 2012, Petitioners also filed a revision to the proposed scope language (''Second Scope Revision''). In accordance with section 732(b) of the Tariff Act of 1930, as amended (the ''Act''), Petitioners allege that imports of steel wire garment hangers from Vietnam and Taiwan 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 the investigation involving Vietnam is April 1, 2011, through September 30, 2011. The POI for the investigation involving Taiwan is October 1, 2010, through September 30, 2011.[3]

[1] *See* ''Petitions for the Imposition of Antidumping Duties on Steel Wire Garment Hangers from Taiwan and Antidumping and Countervailing Duties on Steel Wire Garment Hangers from the Socialist Republic of Vietnam,'' filed on December 29, 2011 (the ''Petitions'').

[2] A countervailing duty (''CVD'') petition was also filed on steel wire garment hangers from Vietnam.

[3] *See* 19 CFR 351.204(b)(1).

Scope of Investigations

The product covered by these investigations is steel wire garment hangers from Vietnam and Taiwan. For a full description of the scope of the investigations, please *see* the ''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 (*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. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determinations. The Department encourages all interested parties to submit such comments by February 7, 2012, twenty calendar days from the signature date of this notice. All comments must be filed on the records of Vietnam and Taiwan antidumping duty investigations as well as Vietnam countervailing duty investigation. Comments should 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. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 1870 and stamped with the date and time of receipt by the deadline noted above.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of steel wire garment hangers to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as (1) general product characteristics and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel wire garment hangers, it may be that only a select few product characteristics that take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments by February 7, 2012. Additionally, rebuttal comments must be received by February 14, 2011. All comments must be filed on the records of the Vietnam and Taiwan 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.[4]

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 steel wire garment hangers constitute 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: Steel Wire Garment Hangers from Taiwan'' (''Taiwan AD Checklist'') at Attachment II; ''Antidumping Duty Investigation Initiation Checklist: Steel Wire Garment Hangers from Vietnam'' (''Vietnam AD Checklist'') at Attachment II, on file electronically in the Central Records Unit (room 7046 at

[4] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988)).

Herbert C Hoover Building) via IA ACCESS.

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 production as well as supporters' production of the domestic like product in 2010, and compared this to the estimated total production of the domestic like product for the entire domestic industry. To estimate total 2010 production of the domestic like product, Petitioners used their own data and industry specific knowledge. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Taiwan AD Checklist at Attachment II and Vietnam AD Checklist at Attachment II.

Our review of the information 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 production 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).[5] 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 production of the domestic like product.[6] 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 production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[7] 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.[8]

The Department finds that the 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.[9]

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 shipments, reduced capacity, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, an increase in import penetration, and threat of future injury.[10] 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.[11]

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 of imports of steel wire garment hangers from Vietnam and Taiwan. The sources of data for the deductions and adjustments relating to the U.S. price, the factors of production (''FOPs'') (for Vietnam) and cost of production (''COP'') (for Taiwan) are also discussed in the country-specific initiation checklists.[12]

Export Price

Vietnam

For Vietnam, Petitioners calculated export price (''EP'') based on offers for sale of steel wire garment hangers by certain Vietnamese exporters/resellers and declarations of lost U.S. sales by U.S. producers during the POI, as identified in four ''Declarations Regarding Lost U.S. Sales.'' [13] Based on the stated sales and delivery terms, Petitioners deducted adjustments, charges and expenses associated with exporting and delivering to the U.S. customer, where appropriate.[14] Petitioners made no other adjustments.[15]

Taiwan

For Taiwan, Petitioners based U.S. EP on a declaration of lost U.S. sales of three major types of steel wire garment hangers by U.S. producers and the average unit value (''AUV'') for U.S. Harmonized Tariff Schedule (''USHTS'') 7326.20.0020, described as ''garment wire hangers of iron or steel,'' during the POI. The lost sales are supported by affidavits.[16] Based on the stated sales and delivery terms, Petitioners deducted from these prices the adjustments, charges, and expenses associated with exporting and delivering the product to the U.S. customer, including ocean freight and insurance, U.S. duties and U.S. inland freight charges, and distributor mark-up, where appropriate.[17]

Normal Value

Vietnam

Petitioners state that the Department has long treated Vietnam as a non-market economy (''NME'') country and this designation remains in effect today.[18] 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 Vietnam investigation. Accordingly, the NV of the product for Vietnam investigation is appropriately based on FOPs valued in a surrogate market-

[5] *See* section 732(c)(4)(D) of the Act; *see also* Taiwan AD Checklist at Attachment II and Vietnam AD Checklist at Attachment II.

[6] *See* Taiwan AD Checklist at Attachment II and Vietnam AD Checklist at Attachment II.

[7] *See id.*

[8] *See id.*

[9] *See id.*

[10] *See* Taiwan AD Checklist at Attachment III and Vietnam AD Checklist at Attachment III.

[11] *See id.*

[12] *See* Vietnam AD Checklist at 6–9 and Taiwan AD Checklist at 6–8.

[13] *See* Vietnam AD Checklist at 6; *see also* Volume III of the Petitions at III–5 and Exhibit III–4.

[14] *See* Vietnam AD Checklist at 6; *see also* Volume III of the Petitions at III–5 and Exhibit III–5, and Supplement to Vietnam Petition at Attachment III–9

[15] *See* Vietnam AD Checklist for additional details.

[16] *See* Taiwan AD Checklist at 6; *see also* Volume II of the Petitions at II–4 and Exhibits II–4.

[17] *See id.*

[18] *See* Volume III of the Petitions at III–1 through III–3; *see also 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,* 76 FR 72164, 72167 (November 22, 2011); *see also Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 56158, 56160 (September 12, 2011).

economy (''ME'') country in accordance with section 773(c) of the Act. In the course of the Vietnam investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issue of Vietnam's NME status and the granting of separate rates to individual exporters.

Petitioners claim that India is an appropriate surrogate country under 19 CFR 351.408(a) because it is an ME country that is at a comparable level of economic development to Vietnam and surrogate values data from India are available and reliable. Petitioners also believe that India is a significant producer of comparable merchandise. Petitioners are not aware of significant production of steel wire garment hangers among other potential surrogate countries, such as Bangladesh, the Philippines, Indonesia, Sri Lanka, and Pakistan.[19] Based on the information provided by Petitioners, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the 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 after the date of publication of the preliminary determination.

Petitioners calculated the NV and dumping margins for the U.S. price, discussed above, using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners calculated NV based on consumption rates experienced by U.S. producers.[20] Petitioners assert that, to the best of Petitioners' knowledge, the consumption rates of the domestic producers are very similar, if not identical, to the consumption of Vietnamese producers.[21]

Petitioners valued by-products and most FOPs based on reasonably available, public surrogate country data, specifically, Indian import statistics from the Global Trade Atlas (''GTA'').[22] Petitioners excluded from these import statistics values from countries previously determined by the Department to be NME countries, and 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.[23] For valuing other FOPs, Petitioners used sources selected by the Department in recent proceedings involving Vietnam or publically available sources from India.[24] In addition, Petitioners made Indian Rupee/U.S. dollar (''USD'') currency conversions using average exchange rates for the POI, based on Federal Reserve exchange rates.[25]

Petitioners determined labor costs using the labor consumption rates derived from U.S. producers.[26] Petitioners valued labor costs using the calculated wage rate in a recent review involving steel wire garment hangers from the People's Republic of China.[27]

Petitioners determined electricity costs using the electricity consumption rates, in kilowatt hours, derived from one U.S. producer's experience.[28] Petitioners valued electricity using the Indian electricity rate reported by the Central Electric Authority of the Government of India.[29]

Petitioners determined water costs using the water consumption derived from one U.S. producer's experience.[30] Petitioners valued water based on publically available information from the Maharashtra Industrial Development Corporation.[31]

Petitioners determined natural gas costs using the natural gas consumption rates derived from one U.S. producer's experience.[32] Petitioners valued natural gas costs using GTA import statistics.[33]

Petitioners based factory overhead, selling, general and administrative (''SG&A''), and profit on data from Sterling Tools Limited (''Sterling''), an Indian producer of comparable merchandise.[34] Therefore, because Sterling is a producer of comparable merchandise, the Department finds that Petitioners' use of Sterling's financial ratios appropriate.[35]

Petitioners determined packing material costs using the consumption rates derived from U.S. producers' experience.[36] Petitioners valued packing materials using GTA India import statistics.[37]

Thus, the Department determines that the surrogate values used by Petitioners are reasonably available and, thus, acceptable for purposes of initiation.

Taiwan

NV Based on Constructed Value (''CV'')

Petitioners used CV to estimate NV because home market or third country pricing was not reasonably available.[38] When such information is unavailable the Department may use CV to estimate NV. In accordance with section 773(e)(1) of the Act, Petitioners based constructed value on actual consumption of direct materials, direct

[19] *See* Volume III of the Petitions at III–2 through III–3.

[20] *See* Volume III of the Petitions at III–3 through III–4.

[21] *See* Volume III of the Petitions at III–3 through III–4 and Exhibits III–2 and III–3, and Supplement to Vietnam Petition at (Supp-III)–4, Attachment III–3, and Attachment III–8.

[22] *See* Volume III of the Petitions at III–4 and Exhibit III–2; *see also* Supplement to Vietnam Petition at Petition at Attachment III–5.

[23] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 55039 (September 24, 2008) (''*PET Film*''); *see also* Volume III of the Petitions at III–4 and Exhibit III–2, and Supplement to Vietnam Petition at Attachment III–1.

[24] *See* Volume III of the Petitions at III–4 and Exhibit III–2; see also Supplement to Vietnam Petition at Attachment III–1.

[25] *See* Volume III of the Petitions at III–4 and Exhibit III–3, and Supplement to Vietnam Petition at (Supp-III)–2, and Attachment III–4.

[26] *See* Volume III of the Petitions at Exhibit III–3.

[27] *See Steel Wire Garment Hangers From the People's Republic of China: Preliminary Results and Preliminary Rescission, in Part, of the Second Antidumping Duty Administrative Review,* 76 FR 66903, 66910 (October 28, 2011) (citing Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: ''Second Administrative Review of Steel Wire Garment Hangers from the People's Republic of China: Surrogate Values for the Preliminary Results,'' dated October 24, 2011, at 1, Exhibit 12, and Exhibit 13); *see also, See* Supplement to Vietnam Petition at (Supp-III)–1, and Attachment III–1.

[28] *See* Volume III of the Petitions at Exhibit III–3, Supplement to Vietnam Petition at Attachment III–8.

[29] *See* Supplement to Vietnam Petition at Attachment III–1.

[30] *See* Volume III of the Petitions at Exhibit III–3, Supplement to Vietnam Petition at Attachment III–8.

[31] *See* Supplement to Vietnam Petition at Attachment III–1.

[32] *See* Volume III of the Petitions at Exhibit III–3, Supplement to Vietnam Petition at Attachment III–8.

[33] *See* Volume III of the Petitions at Exhibit III–2 and Supplement to Vietnam Petition at Attachment III–6.

[34] *See* Volume III of the Petition at III–4 through III–5, Exhibit III–2, and Supplement to Vietnam Petition at Attachment III–2.

[35] *See* 19 CFR 351.408(4).

[36] *See* Volume III of the Petition, at Exhibit III–1, Supplement to Vietnam Petition at Attachment III–8.

[37] *See* Volume III of the Petitions at Exhibit III–2.

[38] Petitioners documented its attempts to obtain such information. *See* Volume II of the Petition at II–2.

labor, energy, overhead, and general expenses, plus amounts for profit and packing, for several major types of steel wire garment hangers.[39]

Petitioners assert that, according to the best available information, Taiwanese producers of hangers utilize similar production methods as U.S. producers to produce subject merchandise. As a result, Petitioners used the actual consumption rates of M&B Metal Products Inc., one of the Petitioners, to provide a reasonable basis from which to estimate the costs for the Taiwanese producers of hangers. No adjustments were made between Petitioners' production process and the process employed by Taiwanese producers because the production of steel wire garment hangers for both is very similar.[40] Petitioners calculated raw materials, labor, energy, and packing based on its own production experience using publically available data.[41] Petitioners provided financial statements from China Steel Corporation, a Taiwanese manufacturer of steel products, for the calculation of factory overhead, SG&A and profit.[42]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of steel wire garment hangers from Vietnam and Taiwan are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of EPs and NV calculated, in accordance with section 773(c) of the Act, the estimated dumping margins for steel wire garment hangers from Vietnam range from 117.48 percent to 220.68 percent.[43] Based on a comparison of EPs and CV calculated in accordance with section 773(a)(4) of the Act, the estimated dumping margins for steel wire garment hangers from Taiwan range from 18.90 percent to 125.43 percent.[44]

Initiation of Antidumping Investigations

Based upon the examination of the Petitions on steel wire garment hangers from Vietnam and Taiwan, 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 steel wire garment hangers from Vietnam and Taiwan 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 and 19 CFR 351.205(b)(1), 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).[45] 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.''[46]

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in either 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 and Quantity and Value Questionnaire

Vietnam

The Department will request quantity and value information from all known exporters and producers identified in the Petitions.[47] The quantity and value data received from Vietnamese exporters/producers will be used as the basis to select the mandatory respondents. The Department requires that the 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.[48]

In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site (*http://ia.ita.doc.gov/ia-highlights-and-news.html*). Exporters and producers of steel wire garment hangers that do not receive quantity and value questionnaires but intend to submit a response can obtain a copy from the Import Administration Web site. The quantity and value questionnaire must be submitted by all Vietnamese exporters/producers no later than February 8, 2012, 21 days after the signature date of this **Federal Register** notice.

Taiwan

Following standard practice in AD investigations involving ME countries, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports under the HTSUS numbers 7326.20.0020 and 7323.99.908. 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.

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 the Vietnam Investigation

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application.[49] Based on our experience in processing the separate-

[39] *See* Taiwan AD Checklist at 7–8; *see also* Volume II of the Petition at II–2 though 4 and Exhibit II–1.

[40] *See* Taiwan AD Checklist at 7; *see also* Volume II of the Petition at II–3 and Exhibit II–1.

[41] *See* Taiwan AD Checklist at 7–8; *see also* Volume II of the Petition at II–3 and Exhibit II–2 and Volume II Supplemental at Attachments II–2, II–3, and II–4.

[42] *See* Taiwan AD Checklist at 8; *see also* Volume II of the Petition at II–3 through 4 and Exhibit II–2 and Volume II Supplemental at Attachments II–7 and Attachments II–8.

[43] *See* Vietnam AD Checklist at 9 and Appendix V.

[44] *See* Taiwan AD Checklist at 9 and Attachment V; *see also* Volume II of Petitions, at II–5, and Exhibit II–4, and Volume II Supplemental at (Supp II)–6, and Attachment II–10.

[45] *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008).

[46] *See id.,* at 74931.

[47] *See* Volume I of Petitions, at Exhibit I–8.

[48] *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 From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005).

[49] *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.*

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.[50] 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 the Vietnam 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.[51]

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 Vietnam and Taiwan. 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 Vietnam and Taiwan, 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 February 12, 2012, whether there is a reasonable indication that imports of steel wire garment hangers from Vietnam and Taiwan 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/CVD proceeding must certify to the accuracy and completeness of that information.[52] 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 proceeding initiated on or after March 14, 2011.[53] The formats for the revised certifications are provided at the end of the *Interim Final Rule* and the *Supplemental 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: January 18, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigations

The merchandise subject to these investigations is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of these investigations are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.

The products subject to these investigations are currently classified under U.S. Harmonized Tariff Schedule (''USHTS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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[50] *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).

[51] *See* Separate Rates and Combination Rates Bulletin, at 6 (emphasis added).

[52] *See* section 782(b) of the Act.

[53] *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)), as supplemented by *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011) (*''Supplemental Interim Final Rule''*).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 25, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or John Conniff, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2209 or (202) 482–1009, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On December 29, 2011, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of steel wire garment hangers from the Socialist Republic of Vietnam (Vietnam) filed in proper form by M&B Metal Products Company, Inc., Innovative Fabrication LLC/Innovative Fabrication LLC/Indy Hanger, and U.S. Hanger Company, LLC (collectively, Petitioners). *See* Petition for the Imposition of Antidumping Duties on Steel Wire Garment Hangers from Taiwan and the Social Republic of Vietnam and the Imposition of Countervailing Duties Against Steel Wire Garment Hangers from the Socialist Republic of Vietnam, dated December 29, 2011 (Petition).

On January 5, 2012, the Department issued a questionnaire requesting information and clarification of certain areas of the general issues and CVD sections of the Petition. Based on the Department's requests, Petitioners filed a supplement to the Petition regarding the CVD section on January 9, 2012, and the general issues on January 10, 2012.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that producers/exporters of steel wire garment hangers from Vietnam received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition 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 investigation that it requests the Department to initiate. *See* ''Determination of Industry Support for the Petition,'' below.

Period of Investigation

The period of investigation (POI) is January 1, 2011, through December 31, 2011.

Scope of the Investigation

The products covered by this investigation are steel wire garment hangers from Vietnam. For a full description of the scope of the investigation, *see* the ''Scope of the Investigation,'' in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, 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. Petitioners submitted revised scope language on January 11, 2011.

As discussed in the preamble to the regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997). The Department encourages interested parties to submit such comments by February 7, 2012, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the antidumping duty (AD) and CVD investigations. Comments must be filed electronically through Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS), *http://iaaccess.trade.gov,* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on January 3, 2012, the Department invited representatives of the Government of Vietnam (GOV) for consultations with respect to the CVD Petition. On January 10, 2012, the Department held consultations with representatives of the GOV. *See* Memorandum to the File, regarding ''Consultations with Officials from the Government of Vietnam on the Countervailing Duty Petition Regarding Steel Wire Garment Hangers,'' dated January 11, 2012 (Consultations Memorandum).

Determination of Industry Support for the Petition

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 investigation. Based on our analysis of the information submitted on the record, we have determined that steel wire garment hangers constitute 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: Steel Wire Garment Hangers from Vietnam (Vietnam CVD Checklist) at Attachment II, on file electronically in the Central Records Unit 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 Petition with reference to the domestic like product as defined in the ''Scope of Investigation,'' in Appendix I of this notice. To establish industry support, Petitioners provided their production of the domestic like product in 2010, and compared their shipments to the estimated total production of the domestic like product for the entire domestic industry. To estimate total 2010 production of the domestic like product, Petitioners used their own data and industry specific knowledge. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Vietnam CVD Checklist at Attachment II.

Our review of the information provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production 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; *see also* Vietnam CVD Checklist at Attachment II. Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Vietnam CVD Checklist at Attachment II. Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition 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 Petition. *See* Vietnam CVD Checklist at Attachment II. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Vietnam CVD Checklist at Attachment II.

The Department finds that Petitioners filed the Petition 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 investigation they are requesting the Department initiate. *See* Vietnam CVD Checklist at Attachment II.

Injury Test

Because Vietnam is 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 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 shipments, reduced capacity, underselling and price depression or suppression, a decline in financial performance, lost sales and revenue, an increase in import penetration, and threat of future injury. *See* Vietnam CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Petition Covering Steel Wire Garment Hangers from Taiwan 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* Vietnam CVD Initiation Checklist at Attachment III.

Initiation of Countervailing Duty Investigation

Section 702(b)(i) 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 the petitioner(s) supporting the allegations. The Department has examined the CVD Petition on garment hangers from 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 a CVD investigation to determine whether manufacturers, producers, or exporters of garment hangers in Vietnam receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in Vietnam:

Loan Program

- Preferential Lending to Exporters

Provision of Goods or Services for Less Than Adequate Remuneration (LTAR)

- Land Rent Reduction/Exemption for Foreign Invested Enterprises (FIEs)
- Land Rent Reduction/Exemption for Exporters
- Land Preferences for Enterprises in Encouraged Industries or Industrial Zones
- Provision of Water for LTAR in Industrial Zones
- Provision of Wire Rod for LTAR

Grant Program

- Grants under the Export Promotion Program

Tax Programs

- Income Tax Preferences for FIEs
- Income Tax Preferences for Enterprises in Industrial Zones
- Income Tax Refund for Reinvestment By FIEs
- Import Duty Exemptions on Imports of Goods for Encouraged Projects
- Import Duty Exemptions for Raw Materials for Exported Goods
- Import Duty Preferences for FIEs, Including Goods to Create Fixed Assets & Raw Materials [1]

For a description of each of these programs, *see* the Petition. For discussion of the Department's decision to initiate an investigation of these programs, *see* Initiation Checklist.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the POI. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department will release CBP data under Administrative Protective Order shortly after the signature date of this notice. The Department invites comments regarding the CBP data and respondent selection to be submitted to the Department within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to representatives of the GOV. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOV, 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 Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of subsidized garment hangers from Vietnam are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in this investigation 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 or 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 antidumping duty or countervailing duty 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. See also Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). 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: January 18, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I—Scope of the Investigation

The merchandise subject to the investigation is steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and/or whether or not fashioned with paper covers or capes (with or without printing) and/or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped, or latex (industrial) hangers.

Specifically excluded from the scope of the investigation are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome-plated steel wire garment hangers with a diameter of 3.4mm or greater.

The products subject to the investigation are currently classified under *U.S. Harmonized Tariff Schedule* (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

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[1] Initially, Petitioners separately alleged the following three programs, Import Duty Preferences for FIEs, Import Duty Exemptions for FIEs Using Imported Goods to Create Fixed Assets, and Import Duty Exemption on Raw Materials for FIEs Operating in Designated Areas. In their January 9, 2012, filing Petitioners subsumed the two latter programs into the Import Duty Preferences for FIEs program.

DEPARTMENT OF COMMERCE

International Trade Administration

Executive-led Aerospace and Defense Industry Trade Mission to Turkey—Notification

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing a U.S.—Turkey Aerospace and Defense Industry Trade Mission to Ankara and Istanbul December 3–7, 2012. This mission will be led by a Senior Commerce Department official. The mission's goal is to introduce a variety of U.S. aerospace and defense industry manufacturers and service providers to end-users and prospective partners whose needs and capabilities are targeted to each U.S. participant's strengths. Participating in an official U.S. industry delegation, rather than traveling to Turkey on their own, will enhance the companies' ability to secure meetings in Ankara and Istanbul. Trade

mission participants will have the opportunity to interact extensively with CS Turkey officers and specialists as well as State Department and U.S. Office of Defense Cooperation personnel to discuss industry developments, opportunities, and sales strategies.

During the mission, U.S. delegation members will learn about policies and opportunities in Turkey's aerospace and defense industry. Most industry manufacturers and component suppliers, distributors and agents are based in Ankara or Istanbul, offering the opportunity for good matchmaking and networking. In addition to government briefings, matchmaking and networking opportunities, the trade mission will include three site visits to company facilities and production centers in both Ankara and Istanbul.

Commercial Setting

Turkey is at the crossroads of Europe, between the Middle East and Asia and an emerging aerospace and defense hub for markets in Europe, the Caucasus, and the Middle East and North Africa (MENA). With a population of over 70 million people, it has the world's sixth largest army with 720,000 soldiers. This is the second largest army in NATO after the United States. The Turkish Air Force (TAF) is the world's third largest operator of the F–16, following the United States and Israel.

Turkey's defense industry is financed primarily by the national budget and Defense Industry Support Fund, and partially by military loans. In Fiscal Year 2011 over $11 billion was allocated to the Ministry of Defense (MOD) spending, 47.5 percent of which was allocated to procurement of goods and services. There is an emphasis on R&D capabilities and the advancement of the national industrial capability. Joint production and technological cooperation are preferred to foreign military sales (FMS) and off the shelf procurements.

The Turkish market is particularly promising for U.S. suppliers seeking joint-venture opportunities. There are increased opportunities for U.S. small- and medium-sized enterprises within a Turkish partnership framework to enable the modernization of the Turkish Armed Forces. Within the next 25 years, a large portion of the Turkish Armed Forces 'combat weapons and equipment will need to be replaced or modernized.

A focal point of the trade mission will be the Turkish Armed Forces Foundation (TuAFF). Created after the 1974 US embargo over the Cyprus issue, the TuAFF enables a defense base for Turkey that creates indigenous or partnered projects, ensuring an independence from a U.S.-only defense environment. It is critical therefore to work with Turkish partners and with the TuAFF where U.S. projects are concerned. The Commercial Service and the Office of Defense Cooperation can assist with appropriate commercial access to assist U.S. companies participating in this partnering endeavor.

The TuAFF is managed by a Board of Trustees consisting of the Minister of National Defense, the Deputy Chief of the General Staff, the Undersecretary of the Ministry of National Defense and the Minister of National Defense Undersecretary of Defense Industry.

Opportunities with the major TuAFF affiliates and subsidiaries will be a primary point of interest for mission participants. The major TuAFF affiliates and subsidiaries are:

- ASELSAN: Communication and information technologies, radars, electronic warfare and intelligence systems and defense systems technologies
- Turkish Aerospace Industries (TAI): Aero structures and space, integrated helicopter systems, integrated aircraft systems, training and consultancy
- HAVELSAN: Software and systems related to C4ISR, naval combat systems, air defense systems, management information systems, simulation and training systems, homeland security systems and energy management systems
- ROKETSAN: Rocket and missile technologies—structural, thermal, mechanical design; internal ballistics; guidance-control, weapon systems, aerodynamic, composite structures, propellant systems and warhead technologies
- ISBIR: Alternators, frequency convertors, gensets
- ASPILSAN: battery pack and Ni-Cd aircraft batteries
- Tusas Engine Industries (TEI): Parts and module production, engine assembly and test maintenance, repair and overhaul services, engine design and product development
- DITAS: Ship owner/ship management, brokering/chartering, ship and tugboat management, vetting and ship vetting
- MIKES: Electronic warfare, radar warning receivers, electronic counter measure systems, chaff flare dispensing systems, electronic support measures, software solutions, avionics

TuAFF organizes the biannual International Defense Industry Fair (IDEF) in Istanbul. IDEF is certified by the U.S. Department of Commerce as a platform vehicle for U.S. firms to enter and expand sales in the Turkish defense market. As the premier defense exhibition for Turkey and the region, in 2011 IDEF hosted 575 exhibitors from 44 countries and over 40,000 visitors. The U.S. Department of Commerce, Commercial Service, supported 21 U.S. participants and the U.S. Pavilion at IDEF 2011.

Civil Aviation

Turkey, a large country with a growing economy, is the size of Texas and is strategically located three hours by plane to 1.5 billion people and $23 trillion of GDP as it is surrounded by developed (Europe) and emerging (Russia, Caucasus and MENA. As a result of Turkey's growing economy and population, Turks have come to rely on domestic and international air service increasingly over the past years. International and domestic passenger numbers in 2009 in Turkey totaled 85 million. An important growth factor for the Turkish aviation industry is the growth of the overall economy-expected at 7–8 percent for 2010. This economic growth has given Turks more money to travel. Turkey's per capita gross national income more than tripled between 2002 and 2009, to $8,730, according to World Bank figures. DHMI, the State Airport Authority is under the umbrella of the Ministry of Transportation. DHMI is responsible and has the final authority for licensing, tendering, building and operating of airports, air traffic management and control, airport management, ground services, airlines and air safety. Presently, there are 44 commercial airports in operation in Turkey. With a work force of more than 7,500 employees, DHMI is the largest Turkish procurement authority with respect to air traffic control (ATC) equipment, navigation aids, airside airport infrastructure, and airport security systems.

DHMI expects to procure safety and security equipment, ground control equipment, perimeter security, communications, runway and landing lighting as well as automated landing systems. Specifically mentioned are bomb detection equipment by nuclear and chemical detection equipment, x-ray machine upgrades, next generation door detectors, fingerprint access to restricted areas and airport perimeter security.

Turkey's aerospace industry has experienced rapid growth over the past decade. In 2010, Turkey's aerospace import market size was $4.2 billion, a compound annual growth rate of 12.5 percent since 2000. In 2010, Turkey's aerospace imports from the U.S. were

$2.7 billion (64 percent of the market). U.S. aerospace companies have a strong presence in Turkey that is expected to continue.

Turkey's strategic location ensures unrivaled advantages in airline, maintenance, repair and overhaul (MRO), cargo and air taxi services in the region. With the addition of Ordu and Mersin airports, the number of civil airports in Turkey grew to 46 in 2010. Istanbul is considering adding a 3rd international airport. In 2009, 19 airlines (including 3 cargo airlines) and 61 air taxi operation companies were active (more recent data is not available). The increase of regional airlines will ensure further growth in the industry. A good example of this growth is that in 2002, Turkish Airlines (then a monopoly) flew to 25 locations from two hubs, total annual domestic passenger traffic of approximately 8.7 million. Today, over 16 passenger airlines carry 41 million domestic passengers and 44 million international passengers from 7 hubs. These figures show the diversification and growth of the civil aviation market. This rapid growth presents immediate and long-term opportunities for U.S. firms.

Since 2002, there has been a 372 percent increase in domestic passenger traffic, a 77 percent increase in international passenger traffic and a 153 percent increase in total (domestic & international) passenger traffic. There are a total of 329 private airline companies operating in the Turkish aerospace industry, 17 of which are Turkish. These companies are creating demand for aircraft parts (new and used) as well as safety equipment, training and management. An example of airline growth in Turkey is Turkish Airlines. Turkish Airlines has grown 15–20 percent on average over the past 10 years. Currently Turkish Airlines is the 4th largest airline in Europe with 142 aircraft (including 64 new aircraft orders), 159 destinations (38 domestic and + 121 international) and was named the Best Airline in Europe at the 2011 Paris Air Show World Airline Awards.

Mission Goals

The goal of the U.S.–Turkey Aerospace and Defense Industry Trade Mission is to (1) introduce U.S. companies to Turkish business partners and industry representatives; and (2) introduce U.S. companies to Turkish government officials to learn about various U.S.-Turkish and Turkish aerospace and defense program opportunities.

Mission Scenario

The trade mission will visit Ankara and Istanbul, Turkey, December 3–7, 2012.

Trade mission members will meet with officials from the Ministry of Defense (UnderSecretary of Defense Industries/SSM), DHMI, and Turkish Armed Forces Foundation, and will take part in business matchmaking appointments with private-sector entities. In addition, participants will attend an Embassy briefing and networking events with U.S. and Turkish government officials and various Turkish companies, participate in at least three site visits and multiple one-on-one business matchmaking appointments.

Matchmaking efforts will involve relevant networking groups such as: the Defense Industry Manufacturers Association (SASAD), Turkey's primary association for producers of defense systems and equipment, and the two American Chambers of Commerce in Turkey. U.S. participants will be counseled before and after the mission by U.S. Export Assistance Center trade specialists, primarily by members of the Aerospace and Defense Technology Team. Participation in the mission will include the following:

- Pre-travel briefings/webinar on subjects ranging from business practices in Turkey to security;
- Pre-scheduled meetings with potential partners, distributors, end users, and local industry contacts in Ankara;
- Transportation to/from the hotel to meetings for the duration of the mission;
- Meetings with key U.S. and Turkish government officials; and
- Participation in industry networking receptions.

Proposed Timetable

Monday, December 3	• Trade Mission Participants Arrive in Ankara. • Dinner with CS/ODC/PMA Staff.
Tuesday, December 4	• Welcome briefing by U.S. Embassy country team. • Presentations by selected trade mission participants to UnderSecretary of Defense Industries (SSM) Murad Bayar (TBC). • Lunch hosted by SASAD, Association of Turkish Defense Industry Companies (TBC). • One-on-One business matchmaking appointments. • Networking Reception with members of Ankara Business Community at Ambassador's Residence (TBC).
Wednesday, December 5	• One-on-one matchmaking appointments. • Lunch and Site visit at Turkish Aerospace Industries (TAI) (TBC). • Fly to Istanbul.
Thursday, December 6	• One-on-one business matchmaking appointments. • Lunch hosted by American Business Forum in Turkey (TBC). • Site visit (Turkish Technic MRO with Aerospace companies/Istanbul shipyards for Defense companies) (TBC). • Late afternoon/evening networking event hosted by TABA (TBC).
Friday, December 7	• Trade Mission Participants Depart.

Participation Requirements

All parties interested in participating in the Executive-led U.S.–Turkey Aerospace/Defense Industry Trade Mission must complete and submit an application for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. Recruitment for the mission is open on a rolling basis starting January 16, 2012 and will be open until we have reached our limit of 15–20 qualified U.S. companies.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $4,850.00 for large firms and $3,435.00 for a small or medium-sized enterprise (SME),*

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies,

Continued

which includes one principal representative. The fee for each additional firm representative (large firm or SME) is $500. Expenses for lodging, some meals, incidentals, and airfare to/from Turkey (including the domestic flight from Ankara to Istanbul) will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

- Suitability of a company's products or services to the mission's goals
- Applicant's potential for business in Turkey, including likelihood of exports resulting from the trade mission
- Consistency of the applicant's goals and objectives with the stated scope of the trade mission

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.trade.gov.trade-missions*) and other Internet web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The timeline for recruitment of this mission will allow for vetting and selection decisions on a rolling basis beginning January 17, 2012 until the maximum of 15–20 participants are selected or until the application period ends on September 28, 2012. Although applications will be accepted through September 28, 2012, applications received after that date will be considered only if space and scheduling constraints permit. All interested U.S. firms are encouraged to submit their applications as soon as possible. We will inform applicants of selection decisions as soon as possible after they are internally reviewed.

Contacts

U.S. Commercial Service Turkey: Mr. Thomas Bruns, Commercial Officer, (until July 15, 2012), Email: *Thomas.Bruns@trade.gov,* Tel: (90) (312) 455–5555, Fax: (90) 312–467–1.

U.S. Commercial Service Aerospace and Defense Technology Team: Mark A. Cooper, Director, U.S. Department of Commerce, U.S. Export Assistance Center—Indiana, 1–(317) 582–2300, Email: *mark.cooper@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–1435 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–FP–P

affiliates, and subsidiaries will be considered when determining business size. The dual pricing schedule reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

DEPARTMENT OF COMMERCE

International Trade Administration

India Infrastructure Business Development Mission—Clarification and Amendment

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is publishing this supplement to the Notice of the India Infrastructure Business Development Mission, 76 FR, No. 247, December 23, 2011, to amend the Notice to revise the dates of the application deadline from January 25, 2012 to the new deadline of February 1, 2012.

SUPPLEMENTARY INFORMATION:

Amendments To Revise the Dates and Provide for Selection of Applicants on a Rolling Basis

Background

Recruitment for this Mission began in December 2011. Due to the holidays, it has been determined that an additional week is needed to allow for additional recruitment and marketing in support of the mission. Applications will be now be accepted through February 1, 2012 (and after that date if space remains and scheduling constraints permit), interested U.S. infrastructure firms and trade organizations which have not already submitted an application are encouraged to do so as soon as possible.

Amendments

1. For the reasons stated above, the Timeframe for Recruitment and Applications section of the Notice of the India Infrastructure Business Development Mission, 76 FR, No. 247, December 23, 2011, is amended to read as follows:

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other Internet Web sites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for this mission will conclude no later than February 1, 2012. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis beginning August 31, 2011. We will inform all applicants of selection decisions no later than February 15, 2012. Applications received after the February 15 deadline will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Jennifer Andberg, Office of Business Liaison, Phone: (202) 482–1360; Fax: (202) 482–4054, Email: *businessliaison@doc.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2012–1436 Filed 1–24–12; 8:45 a.m.]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA953

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of two research permit application requests.

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit application requests relating to salmonids listed under the Endangered Species Act (ESA). The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on February 24, 2012.

ADDRESSES: Written comments on either application should be submitted to the Protected Resources Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404. Comments may also be submitted via fax to (707) 578–3435 or by email to *FRNpermits.SR@noaa.gov.* The applications and related documents may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.* These documents are also available upon written request or by appointment by contacting NMFS by phone (707) 575–6097 or fax (707) 578–3435.

FOR FURTHER INFORMATION CONTACT: Jeffrey Jahn, Santa Rosa, CA (ph.: (707) 575–6097, email.: *Jeffrey.Jahn@noaa.gov).*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened Central California Coast (CCC) steelhead (*Oncorhynchus mykiss*), threatened Northern California (NC) steelhead (*O. mykiss*), endangered Central California Coast coho salmon (*O. kisutch*), threatened Southern Oregon/Northern California Coast coho salmon (*O. Kisutch*) and threatened California Coastal Chinook salmon (*O. tshawytscha*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the applications listed in this notice should set out the specific reasons why a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 16491

Michael Fawcett (Fawcett Biological Consulting) is requesting a 5-year scientific research and enhancement permit to take juvenile Central California Coast (CCC) steelhead, juvenile Northern California (NC) steelhead, juvenile CCC coho salmon, and juvenile California Coastal (CC) Chinook salmon (ESA-listed salmonids) and adult carcasses of CCC steelhead, CCC coho salmon, and CC Chinook salmon associated with research activities in Salmon Creek, the lower Russian River, and small coastal streams between the Gualala River and Tomales Bay watersheds in Marin and Sonoma counties, California. Permit 16491 is a renewal with modifications of a previously issued permit (1045 Modification 1) that expires on February 29, 2012.

The research activities associated with this permit are an integral part of an ongoing effort to monitor and increase the success of restoration and enhancement efforts implemented for ESA-listed salmonids. In the studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

The objectives are to: (1) Monitor the success of CCC coho salmon enhancement efforts through annual redd/spawner surveys, (2) survey potentially suitable habitat for juvenile CCC coho salmon restoration projects, and (3) document CCC and NC steelhead abundance and distribution as a component of CCC coho salmon habitat restoration projects. In these projects, juvenile ESA-listed salmonids will be either observed through snorkel surveys or captured by seine, anesthetized, handled (identified, measured, weighed), tissue sampled (fin-clips), and released. Adult carcasses of ESA-Listed salmonids will be screened with a Passive Integrated Transponder (PIT) tag wand, tissue sampled (fin-clips or scales), and tagged (Floy tag). All data and information will be shared with county, state, and federal entities for use in conservation and restoration planning efforts related to ESA-listed salmonids.

Study 1 will assess salmonid distribution, abundance, and reproductive success at study sites in the Salmon Creek watershed. Researchers will survey stream reaches throughout each calendar year, and observe the number, species, sex, size, condition, location, and behavior of spawning adult ESA-listed salmonids. Redds will be located, marked, and mapped. Carcasses of ESA-listed salmonids that are encountered during spawner surveys will be identified, measured, evaluated for spawning condition, marked with a Floy tag to avoid double counting, and returned to the location where they were found. Snorkel surveys will be used to document juvenile ESA-listed salmonid abundance in the vicinity of newly installed instream habitat structures in the Salmon Creek estuary and mainstem. Juveniles will also be captured by seine in the estuary, mainstem, and tributaries of Salmon Creek to establish reliability of the snorkel surveys. Juvenile ESA-listed salmonids will be tissue sampled (fin-clip) for genetic analysis by Carlos Garza at the NMFS Southwest Fisheries Science Center.

Study 2 will analyze the genetics, inter-annual variability, and relative abundance of juvenile NC and CCC steelhead and CCC coho salmon in small coastal streams between the Gualala River and Tomales Bay watersheds. This survey will include snorkel surveys and juvenile salmonids will be captured by seine annually from August through December. Captured fish will be anesthetized and a subset will be tissue sampled (fin-clip). All captured fish will be released back into the habitat from which they were taken.

Permit 16274

Mendocino Redwood Company (MRC) is requesting a 5-year scientific research permit to take juvenile and spawned adult carcasses of Southern Oregon/Northern California Coast (SONCC) coho salmon, CCC coho salmon, CC Chinook, NC steelhead, and CCC steelhead associated with four research projects in streams within MRC ownership in Mendocino and Sonoma

counties, California. Permit 16274 is a renewal with modifications of a previously issued permit (1181 Modification 1) that expired on November 30, 2011.

The purpose of the research is to continue an ongoing effort to assess adult and juvenile population trends and distribution of ESA-listed salmonids, and to document salmonid habitat conditions in streams within MRC ownership. This information will be used to help assess land management practices and will be shared with interested state and federal agencies to help assess the current populations of ESA-listed salmonids. In the studies described below, researchers do not expect to kill any listed fish but a small number may die as an unintended result of the research activities.

In study 1, snorkel surveys and single pass electrofishing will be conducted between June and November each year in watersheds in Mendocino and Sonoma counties, California, to determine ESA-listed salmonid distribution. Captured fish will be anesthetized, identified, measured and/or weighed, and released back into the stream from which they were taken.

In Study 2, salmon spawner abundance surveys will be conducted annually from November through April in several watersheds in Mendocino County. Researchers will document the number, species, location, and behavior of spawning adults and redds will be located, flagged, and measured. Carcasses of ESA-listed salmonids will be measured, sex recorded, marked to avoid double counting, and returned to the location where they were found. There will be no take of live adult ESA-listed salmonids associated with this study.

Study 3 is a salmonid smolt outmigration abundance monitoring study in the Little North Fork Navarro River and South Fork Albion River in Mendocino County. This study will utilize one rotary screw trap and/or a weir/pipe trap from February through June in each watershed. Captured fish will be anesthetized, measured, and released downstream of the trap. Coho salmon and steelhead will be marked using caudal fin-clips and released upstream of the trap for a mark-recapture study to determine trap efficiency.

Study 4 is a salmonid monitoring study to determine the utilization of pond habitat in a tributary to the Navarro River, the Albion River and possibly a pond habitat in Cottaneva Creek, in Mendocino County. The study will either use a minnow trap and bait, fyke trap, or weir/pipe trap to determine if ESA-listed salmonids utilize Ray Gulch as overwintering or pre-outmigration refugia. If salmon are found, the study will use mark/recapture methods to estimate population numbers.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decision will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: January 20, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–1564 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA938

Marine Mammals; File No. 17029

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

ACTION: Notice; receipt of application for permit.

SUMMARY: Notice is hereby given that Matson's Laboratory, LLC (Gary Matson, Responsible Party), P.O. Box 308, 8140 Flagler Road, Milltown, MT 59851, has applied in due form for a permit to receive, import, export, possess, and conduct analyses marine mammal specimens for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before February 24, 2012.

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. 17029 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits and Conservation 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

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments on this application should be submitted to the Chief, Permits and Conservation 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 File No. 17029 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation 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: Laura Morse or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 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 (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant is requesting authorization for the receipt, possession, import and export of teeth and prepared microscope slides obtained from all seal and sea lion species, expect walrus (Order Pinnipedia). The Matson Laboratory provides age related data to researchers and biologists. Age data are used in population modeling, with age structure an indicator of population condition. Teeth are sent to the laboratory for cementum age analysis. Teeth from no more than 2000 individuals will be analyzed annually. Import and export authority is requested for all locations wherever pinnipeds occur and are the subject of government-authorized research and/or harvest. No live animals would be harassed or taken, lethally or otherwise, under the permit. A permit is requested for five years.

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 activity proposed is categorically excluded from the requirement to

prepare an environmental assessment or environmental impact statement.

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: January 19, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–1566 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–T–2011–0050]

Establishment of a One-Year Retention Period for Trademark-Related Papers That Have Been Scanned Into the Trademark Initial Capture Registration System

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is establishing a one-year retention period that began on September 26, 2011, for papers scanned into the Trademark Initial Capture Registration System (TICRS) prior to September 26, 2011, or began or begins on a paper's submission date, for papers scanned into TICRS on or after September 26, 2011. After the expiration of the one-year retention period, the USPTO will dispose of the paper documents unless, within sufficient time prior to disposal, the relevant trademark applicant or owner files a request to correct the electronic record in TICRS, and the request remains outstanding at the time disposal would otherwise have occurred. The one-year retention period for papers scanned into TICRS will reduce the costs currently associated with indefinitely warehousing paper documents, while permitting sufficient time for the review and rarely needed correction of the scanning of such paper documents. The USPTO received no comments to the notice published September 23, 2011 on this proposal.

DATES: Applicability Date: For papers scanned into TICRS prior to September 26, 2011, the one-year retention period began on September 26, 2011. For papers scanned into TICRS on or after September 26, 2011, the one-year retention period began or begins on the paper's submission date.

FOR FURTHER INFORMATION CONTACT: Cynthia C. Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, by telephone at (571) 272–8742.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 2011, the USPTO published a notice and request for comments on a proposal to establish a retention period of one year for trademark-related papers that have been scanned into TICRS. *See Request for Comments on Establishment of a One-Year Retention Period for Trademark-Related Papers That Have Been Scanned Into the Trademark Initial Capture Registration System,* 76 FR 59114 (September 23, 2011), 1371 OG 168 (October 18, 2011). The USPTO received no comments in response to the notice.

The proposed change to the USPTO's past practice of indefinitely retaining papers that have been scanned into TICRS stems from the relatively small number of paper trademark-related submissions received at the USPTO and the USPTO's practice of scanning all paper documents into TICRS, resulting in paper documents that duplicate the electronic record in TICRS. Moreover, the USPTO's multiple reviews of the electronic record in TICRS to ensure accuracy of the data have rendered the practice of indefinite paper retention unnecessary and not cost-effective.

Changes: One-Year Retention Period for Paper Records

In view of the lack of any public comments opposing the establishment of a one-year retention period, the USPTO is establishing a one-year retention period for the retention of paper records. Specifically, the one-year retention period begins on: September 26, 2011, for papers scanned into TICRS prior to September 26, 2011; or a paper's submission date, for papers scanned into TICRS on or after September 26, 2011. TICRS is available to the public through the Trademark Document Retrieval (TDR) and the Trademark Status and Document Retrieval (TSDR) databases on the USPTO Web site. This plan allows the USPTO and the public sufficient time to review and determine the accuracy of the record in TICRS/TDR/TSDR and request any needed corrections, thereby providing assurance that the record is correct. The plan also significantly reduces the costs currently associated with indefinitely warehousing duplicative paper records. Paper filings with electronic and digital media attachments are not subject to the one-year retention period and will remain retrievable, consistent with past practice.

After the expiration of the one-year retention period, the USPTO will dispose of the paper records, unless a request to correct the electronic record in TICRS remains outstanding. Requests to correct the electronic records in TICRS should be emailed to ''*TM–TDR–Correct@uspto.gov*'' using the subject line ''Electronic Record Correction'' at least one month prior to the expiration of the one-year retention period to allow sufficient time to process the request. The request should include: (1) The serial number or registration number; (2) the date and nature of the paper document filed; (3) a description of the error(s) in TICRS/TDR/TSDR; (4) the name and telephone number of the applicant or owner; and (5) a replacement copy of the paper document, if available. The USPTO will review the request and update the record within 21 days of receipt, if appropriate. The applicant or owner may check TICRS or TDR/TSDR approximately three weeks after submitting the request to verify entry of the requested changes.

Dated: January 17, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–1437 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2011–0032]

Establishment of a One-Year Retention Period for Patent-Related Papers That Have Been Scanned Into the Image File Wrapper System or the Supplemental Complex Repository for Examiners

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) published a notice on August 29, 2011 requesting comments on a proposal to establish a retention period of one year for patent-related papers that have been scanned into the Image File Wrapper system (IFW) or the Supplemental Complex Repository for Examiners (SCORE). The USPTO has considered the comment and is establishing a one-year retention period that: (1) Began on September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or

(2) began or begins on a paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. After the expiration of the one-year retention period (after September 1, 2012, or later), the USPTO will dispose of the paper unless, within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time disposal of the paper would have otherwise occurred. The one-year retention period for papers scanned into IFW or SCORE replaces the USPTO's past practice of indefinitely retaining the papers, which has been rendered unnecessary and not cost-effective by improvements in scanning and indexing.

DATES: *Effective Date: January 25, 2012. Applicability Date:* For papers scanned into IFW or SCORE prior to September 1, 2011, the one-year retention period began on September 1, 2011. For papers scanned into IFW or SCORE on or after September 1, 2011, the one-year retention period began or begins on the paper's submission date.

ADDRESSES: Comments concerning this notice may be sent by electronic mail message over the Internet addressed to *IFWPaperRetention@uspto.gov,* or submitted by mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by mail, the USPTO prefers to receive comments via the Internet.

The comments will be available for public inspection at the Office of the Commissioner for Patents, located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia, and will be available via the USPTO Internet Web site (address: *http://www.uspto.gov*). Because comments will be available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Associate Commissioner for Patent Examination Policy, by telephone at (571) 272–7728, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo.

SUPPLEMENTARY INFORMATION: In August 2011, the USPTO published a notice requesting comments from the public on a proposal to establish a retention period of one year for patent-related papers that have been scanned into IFW or SCORE. *See Establishing a One-Year Retention Period for Patent-Related Papers That Have Been Scanned Into the Image File Wrapper System or the Supplemental Complex Repository for Examiners,* 76 FR 53667 (August 29, 2011), 1370 *Off. Gaz. Pat. Office* 211 (September 17, 2011). The August 2011 notice explained the USPTO's past practice of indefinitely retaining papers that have been scanned into IFW or SCORE. The August 2011 notice set forth in detail the USPTO's reasons for wanting to establish a one-year retention period for patent-related papers that have been scanned into IFW or SCORE, including how improvements in scanning and indexing have rendered the practice of indefinite paper retention unnecessary and not cost-effective.

The USPTO received one comment in response to the August 2011 notice. Specifically, the comment urged the USPTO to extend the retention period beyond one year. The comment expressed concern that the USPTO's system of scanning documents originally filed in paper may introduce a subtle error that may not become apparent until more than a year after filing. The comment noted that resolution of the error could require referring to the application papers as originally filed to prove that the papers were filed without the error.

The USPTO appreciates the comment and has considered it. However, as stated in the August 2011 notice, the number of issues that arise which actually require the USPTO to reference application papers as originally filed has steadily declined in the years since the USPTO started scanning, in part due to continued improvements in indexing techniques and scanning quality, to the point that continued indefinite retention of papers is not cost-effective. Furthermore, the August 2011 notice sets forth a procedure for resolving disputes concerning the content of papers as filed versus the content of papers as scanned, including any such disputes which arise beyond one year, *i.e.,* after the USPTO has likely disposed of the relevant originally filed papers under the one-year retention period.

Therefore, the USPTO is establishing a one-year retention period for papers that have been scanned into IFW or SCORE. Specifically, the USPTO is establishing a one-year retention period that: (1) Began on September 1, 2011, for papers scanned into IFW or SCORE prior to September 1, 2011; or (2) began or begins on the paper's submission date, for papers scanned into IFW or SCORE on or after September 1, 2011. The one-year retention period is consistent with the USPTO's new USPTO-specific records disposition authority N1–241–10–1, item 4.4, which was approved by the National Archives and Records Administration (NARA) on October 27, 2011, and is available at *http://www.archives.gov/records-mgmt/rcs/schedules/departments/department-of-commerce/rg-0241/n1-241-10-001_sf115.pdf.* Papers that have not been scanned into IFW or SCORE, such as certain papers placed into Artifact Folders, are not subject to the one-year retention period and remain retrievable consistent with past practice. The procedures from the August 2011 notice for the USPTO to dispose of the paper, and to resolve disputes concerning the content of papers as filed versus the content of papers as scanned, are reiterated below.

After the expiration of the one-year retention period (after September 1, 2012, or later), the USPTO will dispose of the paper, unless within sufficient time prior to disposal of the paper, the relevant patent applicant, patent owner, or reexamination party files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE, and the request remains outstanding at the time the paper would have been scheduled for disposal. Filers of requests to correct the electronic record are strongly advised to file their requests by EFS-Web using the document description ''Electronic Record Correction'' at least one month prior to the expiration of the one-year retention period to allow sufficient time to process the request. Requests that are not filed at least one month prior to the expiration of the one-year retention period may not be acted upon in time.

During the one-year retention period, a patent applicant, patent owner, or reexamination party who is considering filing a request to correct the electronic record of a paper, and who believes that the evidence establishes that the need for correction was caused by the USPTO, is advised to consider whether the initial submission date of the paper needs to be secured for the information being corrected. Such situations could involve (1) adding information that would not otherwise be supported by the original specification, (2) avoiding a reduction in patent term adjustment, or (3) avoiding an impact on the timeliness of an information disclosure statement under 37 CFR 1.97. If the initial submission date of the paper does not need to be secured for the information being corrected, the patent applicant, patent owner, or reexamination party should simply submit a corrective replacement document and accept the

date of such submission for the corrective replacement document. If, however, the initial submission date of the paper needs to be secured for the information being corrected, a request for correction based on the initially submitted paper should be filed as a petition under 37 CFR 1.181. The request should specifically point out the error(s) in the electronic record of the paper in IFW or SCORE and be accompanied by a replacement copy of the paper, along with (1) any evidence to establish (a) that the need for correction was caused by the USPTO, and (b) the proper submission date of the original paper, and (2) a statement that the replacement copy is a true copy of what was originally filed.

When making a decision on the request, the USPTO's presumption will be that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. The USPTO will check to see whether it has the paper at issue. If the USPTO has the paper, the USPTO's version of the paper will either support the request for correction, in which case the request will be granted, or the USPTO's version of the paper will not support the request, in which case the request will be dismissed.

On the other hand, if the USPTO does not have the paper, *e.g.,* the paper has been lost, the presumption that the electronic record of the paper in IFW or SCORE is correct can be rebutted where the evidence submitted with the request is sufficient to overcome the presumption. A postcard receipt which itemizes and properly identifies the items that have been filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. However, while a postcard receipt may be the only evidence needed for the USPTO to accept, for example, the missing tenth page of a 10-page document that has been properly identified on the postcard as a 10-page document, the postcard receipt may be insufficient, on its own, for the USPTO to accept a replacement tenth page of a properly identified 10-page document, where all 10 pages were actually received by the USPTO and, for example, a sentence is missing on one page or a chemical structure is thought to have been changed.

Any decision dismissing a request to correct the electronic record will provide a two-month period to file a request for reconsideration of the decision, in accordance with 37 CFR 1.181(f).

The USPTO will not dispose of a paper for which, within sufficient time prior to disposal of the paper, a *bona fide* request to correct the electronic record of the paper has been filed and remains outstanding at the time the paper would have been scheduled for disposal. A request is a *bona fide* request when it specifically points out the error(s) in the paper and is accompanied by any necessary evidence. A general allegation that a paper requires correction filed without evidentiary support is not a *bona fide* request. It would be inadequate to stay the disposal of the paper and would be dismissed. Once filed, a *bona fide* request to correct the electronic record remains outstanding unless the USPTO has either (1) issued a decision granting either the original request or a request for reconsideration of the original request, or (2) issued a final agency decision denying a request for reconsideration of the original request.

A patent applicant, patent owner, or reexamination party who is considering filing a request to correct the electronic record of a paper, but who cannot establish that the need for correction was caused by the USPTO, is advised to not file the request. Other options for relief may be available when it cannot be established that the need for correction was caused by the USPTO. For example, an amendment under 37 CFR 1.57(a) may be filed to address the problem of an application filed with inadvertently omitted material when the application contains a claim under 37 CFR 1.55 for priority of a prior-filed foreign application, or a claim under 37 CFR 1.78 for the benefit of a prior-filed provisional, nonprovisional, or international application. *See* MPEP § 201.17. As another example, an amendment may be filed to correct an obvious error, along with any evidence, such as an expert declaration, necessary to establish that one of ordinary skill in the art would recognize both the existence of the error and the appropriate correction. *See* MPEP § 2163.07, II.

A patent applicant, patent owner, or reexamination party may file a request to correct the electronic record of a paper after the one-year retention period, if the evidence is believed to establish that the need for correction was caused by the USPTO, and the initial submission date of the paper needs to be secured for the information being corrected. The USPTO likely will have disposed of any paper for which a request to correct the electronic record is filed after the one-year retention period. Therefore, the typical request for correction filed after the one-year retention period will have to overcome the presumption that the electronic record of the paper in IFW or SCORE is accurate and correction is not merited. For certain instances, *e.g.,* when a paper was inadvertently not scanned into SCORE or placed into an Artifact Folder, there will be a black and white image of the paper in IFW that can be used to corroborate any submitted evidence.

The procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE is not a replacement for the USPTO's established procedure for responding to a notice (*e.g.,* a ''Notice of Omitted Item(s) in a Nonprovisional Application'') from the Office of Patent Application Processing (OPAP) indicating that the application papers have been accorded a filing date, but are lacking some page(s) of the specification or some of the figures of drawings described in the specification. Applicants should continue to follow the procedure set forth at *Change in Procedure for Handling Nonprovisional Applications Having Omitted Items, 1315 Off. Gaz. Pat. Office 103 (February 20, 2007),* when responding to such a notice from OPAP.

In addition, the procedure set forth in this notice for filing a request to correct the electronic record of a paper that has been scanned into IFW or SCORE is generally applicable only to situations in which a certain document, or one or more pages of a certain document, contains an error caused by the USPTO that requires correction. The procedure set forth in this notice is not a replacement for the USPTO's file reconstruction procedures (37 CFR 1.251 and MPEP § 508.04). Paper sources for the image files in IFW are boxed in the order that they are scanned, rather than by application number or reexamination control number, such that a request to correct requiring the retrieval of papers from multiple boxes cannot be reasonably effected.

Dated: January 17, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–1404 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2012–0003]

Request for Comments and Notice of Public Hearings on Genetic Diagnostic Testing

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Request for comments; notice of public hearings.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') is interested in gathering information on the genetic diagnostic testing for purposes of preparing a report on the subject as required by the America Invents Act (AIA or Act). To assist in gathering this information, the USPTO invites the public to provide comments and to attend public hearings addressing genetic diagnostic testing.

Public Hearings: The USPTO will hold two public hearings in support of the genetic testing study. The first public hearing will be held on Thursday, February 16, 2012, beginning at 9 a.m., Eastern Standard Time (EST), and ending at 4 p.m., EST, in Alexandria, Virginia. The second public hearing will be held on Friday, March 9, 2012, beginning at 9 a.m., Pacific Standard Time (PST), and ending at 4 p.m., PST, in San Diego, California.

Those wishing to present oral testimony at either hearing must request an opportunity to do so in writing no later than February 8, 2012. Requests to testify should indicate the following: (1) The name of the person wishing to testify; (2) the person's contact information (telephone number and email address); (3) the organization(s) the person represents, if any; (4) an indication of the amount of time needed for the testimony; and (5) a preliminary written copy of the testimony. The USPTO asks for a preliminary written copy of the testimony in order to better prepare for pre-scheduled witness testimony. Requests to testify must be submitted by email to Saurabh Vishnubhakat at *saurabh.vishnubhakat@uspto.gov*. Based upon the requests received, an agenda for witness testimony will be sent to testifying requesters and posted on the USPTO Internet Web site (address: *www.uspto.gov/americainventsact*).

Speakers providing testimony at the hearings should submit a written copy of their testimony for inclusion in the record of the proceedings no later than March 26, 2012.

The public hearings will be available via Web cast. Information about the Web cast will be posted on the USPTO's Internet Web site (address: *http://www.uspto.gov/americainventsact*) before the public hearing.

Transcripts of the hearings will be available on the USPTO Internet Web site (address: *www.uspto.gov/americainventsact*) shortly after the hearings.

Written Comments: Written comments should be sent by email to *genetest@uspto.gov*. Comments may also be submitted by postal mail addressed to Saurabh Vishnubhakat, Attorney Advisor, Office of Chief Economist, United States Patent and Trademark Office, Mail Stop External Affairs, P.O. Box 1450, Alexandria, VA 22313–1450. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. The deadline for receipt of written comments is March 26, 2012. Written comments should be identified in the subject line of the email or postal mailing as ''Genetic Testing Study.''

Because written comments and testimony will be made available for public inspection, information that a respondent does not desire to be made public, such as a phone number, should not be included in the testimony or written comments.

ADDRESSES: The first public hearing will be held at the USPTO in the Madison Auditorium on the concourse level of the Madison Building, located at 600 Dulany Street, Alexandria, Virginia 22314.

The second public hearing will be held at the Joan B. Kroc Institute for Peace & Justice, University of San Diego, 5998 Alcalá Park, San Diego, California 92110.

FOR FURTHER INFORMATION CONTACT: Saurabh Vishnubhakat, Attorney Advisor, Office of Chief Economist, by telephone at (571) 272–9300, or by email at *saurabh.vishnubhakat@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 27 of the AIA charges the Director of the USPTO with delivering to Congress a study and recommendations no later than nine months after the enactment of the Act (i.e., by June 15, 2012) regarding independent second opinion genetic diagnostic testing where patents and exclusive licenses exist that cover primary genetic diagnostic tests. Congress has mandated that the study shall include an examination of at least the following:

(1) The impact that the current lack of independent second opinion testing has had on the ability to provide the highest level of medical care to patients and recipients of genetic diagnostic testing, and on inhibiting innovation to existing testing and diagnoses;

(2) The effect that providing independent second opinion genetic diagnostic testing would have on the existing patent and license holders of an exclusive genetic test;

(3) The impact that current exclusive licensing and patents on genetic testing activity has on the practice of medicine, including but not limited to: the interpretation of testing results and performance of testing procedures; and

(4) The role that cost and insurance coverage have on access to and provision of genetic diagnostic tests.

In the Act, Congress defined the term ''confirming genetic diagnostic test activity'' to mean the performance of a genetic diagnostic test, by a genetic diagnostic test provider, on an individual solely for the purpose of providing the individual with an independent confirmation of results obtained from another test provider's prior performance of the test on the individual.

Issues for Comment: The USPTO seeks comments on how to address the issue of independent second opinion genetic diagnostic testing and its relationship to medical care and medical practice, the rights of innovators, and considerations relevant to medical costs and insurance coverage. The questions enumerated below are a preliminary guide to aid the USPTO in collecting relevant information and to evaluate possible administrative or legislative recommendations that may be provided to Congress. The tenor of the following questions should not be taken as an indication that the USPTO has taken a position or is predisposed to any particular views. The public is invited to answer any or all of these questions. The public is also invited to submit comments on other issues that they believe are relevant to the scope of the study in addition to those listed below.

(1) Currently, how widely available are primary genetic diagnostic tests? How often are such tests prescribed? What are the limitations, if any, on the availability of primary genetic diagnostic tests? If there are limitations on such availability, what are the consequences in terms of the quality of care, human health and medical costs of such limitations? How has the practice of medicine, the quality of care that patients receive, and medical costs and insurance coverage been affected, if at all, by the availability of primary genetic diagnostic tests?

(2) What is the amount and scope of patenting in the field of genetic diagnostic testing? What role, if any, does patenting play in the availability of primary genetic diagnostic testing?

(3) With respect to primary genetic diagnostic tests, how widely available are independent second opinion genetic diagnostic tests? What are the various organizational methods used to make such independent second opinion genetic diagnostic tests available?

(a) What are the limitations, if any, on the availability of such independent second opinion diagnostic tests?

(b) Are any such limitations organizational, associated with the level of quality or demand, or driven by other internal or external factors?

(4) What impact does the availability of independent second opinion genetic diagnostic tests have on the level of care that physicians are able to provide?

(a) Does the current level of availability of independent second opinion genetic diagnostic tests affect the medical decisions and judgment of physicians?

(b) Does the current level of availability of independent second opinion genetic diagnostic tests affect the quality of care received by patients?

(c) Does the current level of availability of independent second opinion genetic diagnostic tests affect the reliability of information presented to patients?

(d) Are there practical consequences of the current availability of independent second opinion genetic diagnostic tests, in terms of patient health, quality of life, and longevity? In terms of the practice of medical care? Are these consequences, if any, relatively rare, or common and widespread?

(5) Is the availability of independent second opinion genetic diagnostic tests related in any manner to innovation in the health care field, especially as relates to the introduction of new or improved techniques associated with existing genetic tests and diagnostic methods?

(6) To the extent that independent second opinion genetic diagnostic tests are not available, what are the appropriate methods for making them more widely provided?

(a) What entities or institutions, if any, should play an active role in ensuring that independent second opinion genetic diagnostic tests are more widely provided? What is the basis for your recommendation in terms of providing the maximum benefit at the appropriate level of cost?

(b) What entities or institutions, if any, should not play a role in ensuring that independent second opinion genetic diagnostic tests are more widely provided?

(7) What public policies, if any, should the Federal Government explore in order to ensure that independent second opinion genetic diagnostic tests are more widely provided? Is the widespread availability of such tests the only issue the Federal Government should consider in fashioning such public policies? Are there public policies that the Federal Government should not explore?

(8) What effect would providing more widespread access to independent second opinion genetic diagnostic tests have on existing owners and license holders of patents that cover genetic diagnostic tests? How should policy makers consider the relationship of patents, which may cover purified genetic substances, to proprietary data derived from conducting tests, each of which may be useful in both improving high quality and wide access to testing but may also provide important competitive advantages that can drive investments in research and development?

(9) What effects, if any, do patents and exclusive licenses have on genetic diagnostic testing?

(a) What effects, if any, do patents and exclusive licenses on genetic diagnostic tests have upon the development of new testing procedures?

(b) What effects, if any, do patents and exclusive licenses on genetic diagnostic tests have upon how new testing procedures are performed?

(c) What effects, if any, do patents and exclusive licenses on genetic diagnostic tests have upon the interpretation of testing results?

(d) What effects, if any, do patents and exclusive licenses on genetic diagnostic tests have upon the further improvement of testing procedures?

(10) What are the pecuniary costs associated with genetic diagnostic testing?

(a) Are there substantial differences between the pecuniary costs of patented genetic diagnostic tests and unpatented genetic diagnostic tests? To the extent that there are cost differences, are these differences attributable to the patents themselves, or are there other factors that may be driving the differences?

(b) Are there substantial differences between the pecuniary costs of patented genetic diagnostic tests and unpatented genetic diagnostic tests available for the same medical disorder? To the extent that there are cost differences, are these differences attributable to the patents themselves, or are there other factors that may be driving the differences?

(11) What effect does pecuniary cost have on patient access to genetic diagnostic tests?

(a) What effect does the cost of primary genetic diagnostic testing have on the likelihood that patients will request such tests? What effect does the cost of an independent second opinion genetic diagnostic testing have on the likelihood that patients will request such tests?

(b) What effect does the cost of primary genetic diagnostic testing have on the likelihood that physicians will prescribe such tests? What effect does the cost of independent second opinion genetic diagnostic testing have on the likelihood that physicians will prescribe such tests?

(12) How extensive is medical insurance coverage for genetic diagnostic testing? What are the differences, if any, between the level of insurance coverage available for genetic diagnostic tests covered by patents and the level of insurance coverage of unpatented genetic diagnostic tests for the same diseases or disorders?

(13) What effect does insurance coverage have on patient access to genetic diagnostic tests?

(a) What effect does the insurance coverage of genetic diagnostic testing have on the likelihood that patients will request such tests? What effect does the insurance coverage of independent second-opinion genetic diagnostic testing have on the likelihood that patients will request such tests?

(b) What effect does the insurance coverage of genetic diagnostic testing have on the likelihood that physicians will prescribe such tests? What effect does the insurance coverage of independent second-opinion genetic diagnostic testing have on the likelihood that physicians will prescribe such tests?

(14) What effect do patents and exclusive licenses have on the availability of insurance coverage for genetic diagnostic tests?

(a) To what extent, if at all, do insurance companies currently cover the costs of independent second opinion genetic diagnostic tests?

(b) Can you provide evidence that any price differential in the cost of such tests is attributable to patents and exclusive licenses, and that any such price differential is a substantial barrier to insurance coverage of independent second opinion genetic diagnostic tests?

Dated: January 18, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–1481 Filed 1–24–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Academy Board of Visitors Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors.

ACTION: Meeting notice.

SUMMARY: In accordance with 10 U.S.C. 9355, the United States Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting in Harmon Hall at the United States Air Force Academy in Colorado Springs, Colorado on 10–11 Feb 2012. The meeting sessions on 10 Feb will begin at 4 p.m. and the meeting sessions on 11 Feb will begin at 8 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Faculty Focus Group; Religious Training and Respect; the Superintendent and Command Chief Update; Diversity in the Athletic Department; the Air Force Academy Athletic Corporation Transition Plan Update; Character Update; Focus Group (Gold Bar Lieutenants on Diversity Recruiting); Center for Character and Leadership Development Military Construction Update; and the Personnel Update. In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Administrative Assistant to the Secretary of the Air Force, in consultation with the Office of the Air Force General Counsel, has determined in writing that the public interest requires two sessions of this meeting shall be closed to the public because they will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Capt Bobby Hale, Chief of Holm Center Programs, Commissioning Programs Division, AF/A1DO, 1500 Perimeter Road, Suite 4750, Joint Base Andrews, MD 20762–6604, (240) 612–6252.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2012–1357 Filed 1–24–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive License; Cobalt Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Cobalt Technologies, Inc., a revocable, nonassignable, partially exclusive license in the United States to practice the Government-owned inventions described in the following: patent application 61/562231: Water and Contaminants Removal From Butanol Fermentation Solutions and/or Broths Using a Brine Solution, filed on November 21, 2011.//patent application 61/527943: Dehydration of Bio-Derived Alcohols to Alkenes Using Highly Selective Catalysts, filed on August 26, 2011.//patent application 12/511796: Diesel and Jet Fuels Based on the Oligomerization of 1-Butene, filed on July 29, 2009.//patent application 12/769757: Turbine and Diesel Fuels and Methods of Making the Same, filed on April 29, 2010.//patent application 13/095245: Selective Isomerization and Oligomerization of Olefin Feedstocks for the Production of Turbine and Diesel Fuels, filed on April 27, 2011.//patent application 13/095290: Selective Isomerization and Oligomerization of Olefin Feedstocks for the Production of Turbine and Diesel Fuels, filed on April 27, 2011.//patent application 13/095201: Selective Isomerization and Oligomerization of Olefin Feedstocks for the Production of Turbine and Diesel Fuels, filed on April 27, 2011.//patent application 61/585943: New Homogeneous Metallocene Ziegler-Natta Catalysts for the Oligomerization of Olefins in Aliphatic-Hydrocarbon Solvents, filed on January 12, 2012.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than February 9, 2012.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Office of Research and Technology Applications, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–

6106, telephone (760) 939–1074, email: *michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: January 18, 2012.

J.M. Beal,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–1454 Filed 1–24–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Extension of Deadlines; Upward Bound Program (Regular Upward Bound (UB))

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice extending deadline dates for the FY 2012 grant competition.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.047A.

SUMMARY: The Secretary extends to February 1, 2012, and April 2, 2012, respectively, the Deadline for Transmittal of Applications and the Deadline for Intergovernmental Review dates that were published in the Applications for New Awards; Upward Bound Program (Regular Upward Bound (UB)) notice on December 19, 2011 (76 FR 78621).

DATES: *Deadline for Transmittal of Applications:* February 1, 2012.

Deadline for Intergovernmental Review: April 2, 2012.

FOR FURTHER INFORMATION CONTACT: Ken Waters, Upward Bound Program, U.S. Department of Education, 1990 K Street NW., room 7000, Washington, DC 20006–8510. Telephone: (202) 502–7586, or by email: *ken.waters@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2011, we published a notice in the **Federal Register** (76 FR 78621) inviting applications for new awards for fiscal year (FY) 2012 for the UB Program. We are extending the Deadline for Transmittal of Applications date published on pages 78621 and 78624 of the application notice to February 1, 2012. We are extending the Deadline for Intergovernmental Review date published on page 78621 of the application notice to April 2, 2012. These dates are extended due to the unavailability of Grants.gov for two days for scheduled system maintenance.

Program Authority: 20 U.S.C. 1070a–11 and 20 U.S.C. 1070a–13.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 20, 2012.

Eduardo M. Ochoa,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2012–1543 Filed 1–24–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–10–000]

Commission Information Collection Activities (FERC–725A); Comment Request; Submitted for OMB Review

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507(a)(1) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1), the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collection described below to the Office of Management and Budget (OMB) for review. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. In compliance with section 3506 of the Paperwork Reduction Act, the Commission previously issued a Notice in the **Federal Register** (76 FR 65504, 10/21/2011) requesting public comments. FERC received no comments on FERC–725A and has made this notation in its submission to OMB.

DATES: Comments in consideration of the collection of information are due February 24, 2012.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The proposed information collection in Docket No. RD11–10–000 relates to Reliability Standard, FAC–008–3—Facility Ratings, developed by the North American Electric Reliability Corporation (NERC) and approved by the Commission in an order dated November 17, 2011, with a January 1, 2013 effective date for the mandatory compliance with the revised Reliability Standard.[1] Reliability Standard FAC–008–3 modifies the currently effective version Reliability Standard FAC–008–1 and subsumes Reliability Standard FAC–009–1. Concurrent with the effective date of FAC–008–3, Reliability Standards FAC–008–1 and FAC–009–1 will be retired. The information collection requirements contained in Reliability Standards FAC–008 and FAC–009 are contained in FERC–725A (OMB Control Number 1902–0244).

There is a net increase in information collection and reporting that will result from implementing Reliability Standard FAC–008–3 and retiring the two superseded Reliability Standards. The breakdown is as follows:

[1] *North American Electric Reliability Corp.,* 137 FERC ¶ 61,123 (2011).

FAC–008–3	Applies to:	Additional reporting beyond FAC–008–1 and FAC–009–1	Additional recordkeeping beyond FAC–008–1 and FAC–009–1
R1	Generator owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R2	Generator owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R3	Transmission owners	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R4	Generator owners and Transmission owners.	None, this requirement is derived from R2 of FAC–008–1.	Retention period increased by 2 years.
R5	Generator owners and Transmission owners.	None, this requirement is derived from R3 of FAC–008–1.	Retention period increased by 2 years.
R6	Generator owners and Transmission owners.	None, this requirement is derived from R1 of FAC–008–1.	Retention period increased by 2 years.
R7	Generator owners	None, this requirement is derived from R2 of FAC–008–1.	Retention period increased by 2 years.
R8	Generator owners that are subject to R2 and Transmission owners.	Newly added reporting of the next most limiting equipment and the thermal rating for the next most limiting equipment.	New retention period of 3 years.

Burden Statement: Public reporting burden for this proposed collection is estimated as:

Additional proposed burden in FERC–725A	Number of respondents per compliance registry summary as of August 29, 2011 (A)	Number of responses per respondent (B)	Hours per respondent per response (C)	Total annual hours (A × B × C)
Report the next most limiting equipment and the thermal rating for the next most limiting equipment.	[2] 83 Generator owners	1	80	6,640
Report the next most limiting equipment and the thermal rating for the next most limiting equipment.	342 Transmission owners	1	[3] 20	6,840
Increase in retention time by 2 years for R1 through R7	833 Generator owners	1	2	1,666
Increase in retention time by 2 years for R1 through R7	342 Transmission owners	1	2	684
Compliance sub-total				13,480
Recordkeeping sub-total				2,350
Total				15,830

Estimated cost burden to respondents is $1,683,400; [*i.e.,* (13,480 hours @ $120 an hour (compliance cost)) + (2,350 hours @ $28 an hour (recordkeeping cost))]. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions, (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information, (3) adjusting the existing ways to comply with any previously applicable instructions and requirements, (4) training personnel to respond to a collection of information, (5) searching data sources, (6) completing and reviewing the collection of information, and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any particular function or activity.

[2] Requirement R8 applies to generator owners that own facilities between the step-up transformer and the point of interconnection. We estimate that 10% of all NERC registered generator owners own such facilities.

[3] Transmission Owner estimate based on the supplemental work required to report the next most limiting equipment and assumes all prerequisite work was performed in compliance with currently effective Reliability Standard FAC–008–1.

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1467 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD11–8–000]

Commission Information Collection Activities (FERC–725I); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy

Regulatory Commission (Commission or FERC) is submitting the information collection FERC–725I, Mandatory Reliability Standards for the Northeast Power Coordinating Council, to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission solicited comments in an order published in the **Federal Register** (76 FR 66057, 10/25/2011) requesting public comments. FERC received no comments on the FERC–725I and is making this notation in its submission to OMB.

DATES: Comments on the collection of information are due by February 24, 2012.

ADDRESSES: Comments filed with OMB, identified by collection FERC–725I, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at (202) 395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. RD11–8–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725I, Mandatory Reliability Standards for the Northeast Power Coordinating Council.

OMB Control No.: To be determined.

Type of Request: Three-year approval of the FERC–725I information collection requirements.

Abstract: This information collection relates to FERC-approved Reliability Standard, PRC–002–NPCC–01—Disturbance Monitoring. This Northeast Power Coordinating Council (NPCC) regional Reliability Standard requires respondents to provide recording capability necessary to monitor the response of the Bulk-Power System to system disturbances, including scheduled and unscheduled outages; requires each reliability coordinator to establish requirements for its area's dynamic disturbance recording needs; and establishes disturbance data reporting requirements.

Reliability Standard PRC–002–NPCC–01 introduces several new mandatory and enforceable requirements for the applicable entities. However, NPCC presently has criteria [1] and published guidance [2] addressing similar requirements that the new Reliability Standard make mandatory. Thus, it is currently usual and customary for affected entities within NPCC to create, maintain and store some of the same or equivalent information identified in Reliability Standard PRC–002–NPCC–01. Therefore, many of the requirements contained in PRC–002–NPCC–01 do not impose new burdens on the affected entities.[3]

Several requirements contained in regional Reliability Standard PRC–002–NPCC–01 do introduce entirely new responsibilities for the applicable entities and each of these is listed in the estimated annual burden section below.

Type of Respondents: Transmission owners, generator owners and reliability coordinators within the NPCC region.[4]

Estimate of Annual Burden: [5]

PRC–002–NPCC–01	Number of respondents annually [6] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual hours (1×2×3)
R13: GO [7] and TO to document acquisition and installation of dynamic disturbance recorders. GO, TO, and RC to develop and employ implementation schedule.	1	1	*Record Retention*—10	10
R14.5: GO and TO maintenance and testing program for stand-alone disturbance monitoring equipment includes monthly verification of active analog quantities.	163	12	*Record Retention*—5	9,780
R14.7: GO and TO requirement to return failed units to service in 90 days. Record kept of efforts if greater than 90 days [8].	33	1	*Reporting (assessment and dist. of records)*—10.	330
R17: RC maintains data on equipment, and provide to RE upon request.	*5*	*1*	*Record Retention*—10	330
			Reporting (assessment and dist. of data)—5.	*25*
			Record Retention—10	*50*

[1] Disturbance Monitoring Equipment Criteria (Aug. 2007), *available at https://www.npcc.org/Standards/Criteria/A-15.pdf* (Disturbance Monitoring Criteria).

[2] Guide for Application of Disturbance Recording Equipment (Sept. 2006), *available at https://www.npcc.org/Standards/Guides/B-26.pdf* (Application Guide).

[3] 5 CFR 1320.3(b)(2) (2011).

[4] These entity types are contained in the North American Electric Reliability Corporation's compliance registry. See *http://www.nerc.com/page.php?cid=3|25* for more information.

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

PRC–002–NPCC–01	Number of respondents annually [6] (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual hours (1×2×3)
Sub-total			*Reporting (assessment and dist).*	*355*
			Record Retention	*10,170*
Total				10,525

The total estimated annual cost resulting from this Reliability Standard is made up the hourly wage cost for record retention and reporting, and the compliance cost for new equipment. The total cost [9] is $1,077,360 ($284,760 + $42,600 + $750,000). The individual components of this cost are:

- Estimated annual record retention cost [10] = 10,170 hours @ $28/hour = $284,360
- Estimated annual reporting cost = 355 hours @ $120/hour = $ 42,600

Total estimated non-hourly annual compliance cost [11] (acquisition and installation of dynamic disturbance recorders) = $750,000

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1472 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

[6] The estimate below regarding the number of respondents is based on the NERC compliance registry as of August 29, 2011. After accounting for double counting, the net number of entities responding will be approximately 167 entities registered as a transmission owner, generation owner, or reliability coordinator.

[7] For purposes of this chart, generation owner is abbreviated to GO, transmission owner is abbreviated to TO, and reliability coordinator is abbreviated to RC.

[8] We estimate that an entity will experience a unit failure greater than 90 days once every five years. Therefore, 20 percent of NPCC's 163 generator owners and transmission owners will experience a unit failure of this duration each year.

[9] In the initial order there was a calculation error in the total cost and in the record retention cost. The difference is minor and has been corrected here.

[10] The hourly reporting cost is based on the estimated cost of an engineer to implement the requirements of the rule. The record retention cost comes from Commission staff research on record retention requirements.

[11] We estimate that annually, approximately one entity within NPCC will have to procure dynamic disturbance recording capability and the total acquisition and installation cost will range between $150,000 and $750,000. We use the higher estimate here.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5042–001]

Boise Project Board of Control; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Non-Capacity Amendment of a Conduit Exemption.

b. *Project No.:* 5042–001.

c. *Date Filed:* December 15, 2011.

d. *Applicant:* Boise Project Board of Control.

e. *Name of Project:* Fargo Drop No. 1 Hydroelectric Project.

f. *Location:* On the Exemptee's Wilder Irrigation District water supply system, near the town of Wilder, in Canyon County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Paul Deveau, Manager, Boise Project Board of Control, 2465 Overland Road, Boise, ID 83705–3155, and Albert P. Barker, Barker Rosholt & Simpson, 1010 W. Jefferson Street, Suite 102, Boise, ID 83701.

i. *FERC Contact:* Mrs. Anumzziatta Purchiaroni, (202) 502–6191, *Anumzziatta.Purchiaroni@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–5042–001) on any comments, motions, or recommendations filed.

k. *Description of proposed amendment:* The authorized but unconstructed project consists of: An inlet structure within the western bank of the Deer Flat low line canal; a 42 inch diameter, 900 foot long penstock; a powerhouse to contain two generating units with a combined rated capacity of 650 kW; a tailrace discharging directly into the Fargo High line canal. Now the exemptee proposes a design change that includes two horizontal Francis turbines and a single horizontal generator on a common shaft. The nameplate capacity of the project would increase from 650 kW to 1,100 kW, and the hydraulic capacity would increase from 100 cfs to 110 cfs. The proposed changes will not involve any change in the volume of water currently diverted for irrigation and will generate power using only water released for irrigation purposes.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online

at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1470 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–193]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2310–193.

c. *Date filed:* April 12, 2011.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Drum-Spaulding Hydroelectric Project.

f. *Location:* The existing Drum-Spaulding Project is located on the west slope of the Sierra Nevada on the South Yuba River, Bear River, North Fork of the North Fork American River, and tributaries in the Sacramento River watershed in Nevada and Placer Counties, California. The project would affect 1,129 acres of federal lands managed by the U.S. Forest Service (Tahoe National Forest), 5.6 acres managed by the Bureau of Land Management, and 5.3 acres managed by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Steve Peirano, Relicensing Project Manager, Pacific Gas and Electric Company, P.O. Box 770000, San Francisco, CA 94177–0001, (415) 973–4481, or email *slp2@pge.com.*

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074 or *alan.mitchnick@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: April 30, 2012; reply comments are due no later than June 13, 2012.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The project consists of 10 developments: Spaulding No. 3; Spaulding No. 1 and No. 2; Drum No. 1 and No. 2; Dutch Flat No. 1; Halsey; Wise; Newcastle; Deer Creek; Alta; and Wise No. 2. In the 10 developments, there are 29 reservoirs with a combined gross storage capacity of 154,388 acre-feet of water; 6 major water conduits; 12 powerhouses with a combined authorized installed capacity of 192.5 megawatts; 7 transmission lines; and appurtenant facilities and structures, including recreation facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–2310) in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. *Procedural Schedule:*

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 30, 2012.
Commission issues Draft Environmental Impact Statement (EIS).	December 26, 2012.
Comments on Draft EIS	February 24, 2013.
Modified Terms and Conditions.	April 25, 2013.
Commission Issues Final EIS.	July 24, 2013.

p. Final amendments to the application must be filed with the Commission no later than 60 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary .

[FR Doc. 2012–1469 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2266–102]

Nevada Irrigation District; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2266–102.

c. *Date filed:* April 15, 2011.

d. *Applicant:* Nevada Irrigation District.

e. *Name of Project:* Yuba-Bear Hydroelectric Project.

f. *Location:* The existing Yuba-Bear Project is located on the west slope of the Sierra Nevada on the Middle Yuba River, Canyon Creek, Fall Creek, Rucker Creek, and Bear River, in Nevada, Placer and Sierra Counties, California. The project would affect 1,541 acres of federal lands managed by the U.S. Forest Service (Tahoe National Forest) and 209 acres managed by the Bureau of Land Management (Sierra Resource Management Area).

g. *Filed Pursuant to:* Federal Power Act 16 USC 791 (a)–825(r) .

h. *Applicant Contact:* Ron Nelson, General Manager, Nevada Irrigation District, 1036 West Main Street, Grass Valley, CA 95945, (530) 271–6824 or email *nelson@nid.dst.ca.us.*

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074 or *alan.mitchnick@ferc.gov*

j. Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions: April 30, 2012; reply comments are due no later than June 13, 2012.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions 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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The project consists of four developments—Bowman, Dutch Flat, Chicago Park, and Rollins—which, in total, include: 13 main dams with a combined gross storage capacity of 207,865 acre-feet of water; four water

conduits; five diversion dams; four powerhouses with a combined installed capacity of 79.32 megawatts; one 9.0-mile-long, 60-kilovolt transmission line; and appurtenant facilities and structures, including recreation facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at - using the ''eLibrary'' link. Enter the docket number excluding the last three digits (P–2266) in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	April 30, 2012.
Commission issues Draft Environmental Impact Statement (EIS).	December 26, 2012.
Comments on Draft EIS	February 24, 2013.
Modified Terms and Conditions.	April 25, 2013.
Commission Issues Final EIS.	July 24, 2013.

p. Final amendments to the application must be filed with the Commission no later than 60 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary .

[FR Doc. 2012–1473 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–45–000]

El Paso Natural Gas Company; Notice of Application

Take notice that on January 5, 2012, El Paso Natural Gas Company (EPNG), Post Office Box 1087, Colorado Springs, Colorado 80944 filed an application in the above referenced docket pursuant to section 7(b) of the Natural Gas Act (NGA) for approval to abandon in place certain compression facilities and appurtenances at six compressor stations in San Juan County, New Mexico and Apache, Coconino, Navajo, and Yavapai Counties, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Susan C. Stires, Director, Regulatory Affairs Department, El Paso Natural Gas Company, Post Office Box 1087, Colorado Springs, Colorado 80944 at (719) 667–7514.

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 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. 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 commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: February 9, 2012

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1475 Filed 1–24–12; 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: EC12–58–000.

Applicants: Endure Energy, L.L.C.

Description: Application for Authorization Under Section 203 of the Federal Power Act, and Request for Confidential Treatment, Expedited Consideration and Waivers of Endure Energy, L.L.C.

Filed Date: 1/13/12.

Accession Number: 20120113–5360.

Comments Due: 5 p.m. ET 2/3/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3274–001.

Applicants: Entergy Arkansas, Inc.

Description: Entergy Arkansas, Inc. submits tariff filing per 35: Attachment H Schedule 7 Compliance Filing to be effective 6/1/2011.

Filed Date: 1/13/12.

Accession Number: 20120113–5304.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER11–3967–003

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35: Errata Filing to Order No. 741 Compliance Filing to be effective 10/1/2011.

Filed Date: 1/13/12.

Accession Number: 20120113–5233.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER11–4266–003.

Applicants: Richland-Stryker Generation LLC.

Description: Notice of Non-Material Change in Status of Richland-Stryker Generation LLC.

Filed Date: 1/13/12.

Accession Number: 20120113–5363.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER11–4423–001.

Applicants: Lockport Energy Associates, L.P.

Description: Supplemental Information of Lockport Energy Associates, L.P.

Filed Date: 1/13/12.

Accession Number: 20120113–5193.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER12–721–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.17(b): Errata Filing to Correct Admin Error in Tariff Record—Docket No. ER12–721–000 to be effective 2/29/2012.

Filed Date: 1/13/12.

Accession Number: 20120113–5243.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER12–811–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35: Compliance filing of FPL and Seminole Electric Cooperative, Inc. to SA No. 162 to be effective 1/1/2012.

Filed Date: 1/13/12.

Accession Number: 20120113–5303.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER12–812–000.

Applicants: El Paso Electric Company.

Description: El Paso Electric Company submits tariff filing per 35.1: Arizona Nuclear Power Project (ANPP) Agreements to be effective 1/13/2012.

Filed Date: 1/13/12.

Accession Number: 20120113–5307.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER12–813–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2166R1 Westar Energy, Inc. NITSA and NOA to be effective 12/1/2011.

Filed Date: 1/13/12.

Accession Number: 20120113–5330.

Comments Due: 5 p.m. ET 2/3/12.

Docket Numbers: ER12–814–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits tariff filing per 35.1: FPL Lee County Electric Cooperative, Inc. RS No. 324 to be effective 3/15/2012.

Filed Date: 1/13/12.

Accession Number: 20120113–5336.

Comments Due: 5 p.m. ET 2/3/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–159–000.

Applicants: City of Kinston, NC.

Description: FERC Form 556 of City of Kinston—West Pharmaceutical Project.

Filed Date: 1/12/12.

Accession Number: 20120112–5170.

Comments Due: None Applicable.

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: January 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1411 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–21–002.
Applicants: Agua Caliente Solar, LLC.
Description: Clarification of Notice of Change in Status for Agua Caliente.
Filed Date: 1/13/12.
Accession Number: 20120113–5365.
Comments Due: 5 p.m. ET 1/27/12.

Docket Numbers: ER12–33–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 01–17–12 Schedule 10–G Compliance Filing to be effective 12/31/2011.
Filed Date: 1/17/12.
Accession Number: 20120117–5011.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–101–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: C004–P11 FCA Compliance (1–17–12) to be effective 10/18/2011.
Filed Date: 1/17/12.
Accession Number: 20120117–5118.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–109–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.19a(b): Refund Calculations—NTUA, Dry Lake Wind, Dry Lake Wind II and Glendale Energy to be effective N/A.
Filed Date: 1/17/12.
Accession Number: 20120117–5143.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–110–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.19a(b): Refund for Rate Schedule 255 with Luke Air Force Base to be effective N/A.
Filed Date: 1/17/12.
Accession Number: 20120117–5142.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–281–001.
Applicants: Northampton Generating Company, L.P.
Description: Northampton Generating Company, L.P. submits tariff filing per 35: Northampton First Revised MBR Tariff to be effective 1/18/2012.
Filed Date: 1/17/12.
Accession Number: 20120117–5186.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–372–000.
Applicants: ITC Midwest LLC.
Description: ITC Midwest LLC submits tariff filing per 35.19a(b): Filing of Refund Report to be effective N/A.
Filed Date: 1/17/12.
Accession Number: 20120117–5159.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–815–000.
Applicants: Duke Energy Vermillion II, LLC.
Description: Duke Energy Vermillion II, LLC submits tariff filing per 35.15: Cancellation of Tariff Database to be effective 1/17/2012.
Filed Date: 1/17/12.
Accession Number: 20120117–5012.
Comments Due: 5 p.m. ET 2/7/12.

Docket Numbers: ER12–816–000.
Applicants: PJM Interconnection, L.L.C., American Electric Power Service Corporation.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: AEPSC submits 30th Revised SA No. 1336 among AEPSC & Buckeye to be effective 1/18/2012.
Filed Date: 1/17/12.
Accession Number: 20120117–5198.
Comments Due: 5 p.m. ET 2/7/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH12–6–000.
Applicants: IIF US Holding 2 GP, LLC.
Description: Notification of Material Change in Facts and Update of FERC 65–A Notification of Exemption of IIF US Holding 2 GP, LLC.
Filed Date: 1/17/12.
Accession Number: 20120117–5099.
Comments Due: 5 p.m. ET 2/7/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 17, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1425 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
Agua Caliente Solar, LLC ..	EG12–1–000
Windpower Partners 1993, L.P..	EG12–2–000
South Chestnut LLC	EG12–3–000
Sandy Creek Energy Associates, L.P.	EG12–4–000
AES New Creek, LLC	EG12–5–000
Coram California Development, L.P.	EG12–6–000
Manzana Wind LLC	EG12–7–000
NaturEner Rim Rock Wind Energy, LLC.	EG12–8–000

Take notice that during the month of December 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1477 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 30, LLC	12927–002
Northland Power Mississippi River LLC	14075–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others

to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 30, LLC; Project No. 12927–002.

2. Northland Power Mississippi River LLC; Project No. 14075–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1415 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 39, LLC	12925–002
Northland Power Mississippi River LLC	14078–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 39, LLC; Project No. 12925–002.

2. Northland Power Mississippi River LLC; Project No. 14078–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1414 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 40, LLC	12929–002
Northland Power Mississippi River LLC	14079–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Northland Power Mississippi River LLC; Project No. 14079–000.

2. FFP Project 40, LLC; Project No. 12929–002.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1413 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 41, LLC	12930–002
Northland Power Mississippi River LLC	14080–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 41, LLC; Project No. 12930–002.

2. Northland Power Mississippi River LLC; Project No. 14080–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1412 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 17, LLC	12865–002
Northland Power Mississippi River LLC	14072–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Northland Power Mississippi River LLC; Project No. 14072–000.

2. FFP Project 17, LLC; Project No. 12865–002.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1420 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 21, LLC	12863–002
Northland Power Mississippi River LLC	14074–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Northland Power Mississippi River LLC; Project No. 14074–000.

2. FFP Project 21, LLC; Project No. 12863–002.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1419 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12817–002, Project No. 14083–000]

Free Flow Power Corporation, Northland Power Mississippi River LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Free Flow Power Corporation; Project No. 12817–002.
2. Northland Power Mississippi River LLC; Project No. 14083–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1424 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12851–002, Project No. 14082–000]

FFP Project 7, LLC, Northland Power Mississippi River LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 7, LLC; Project No. 12851–002.
2. Northland Power Mississippi River LLC; Project No. 14082–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1423 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12848–002, Project No. 14081–000]

FFP Project 6, LLC, Northland Power Mississippi River LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 6, LLC; Project No. 12848–002.
2. Northland Power Mississippi River LLC; Project No. 14081–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1422 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 18, LLC	12857–002
Northland Power Mississippi River LLC	14073–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 18, LLC; Project No. 12857–002.
2. Northland Power Mississippi River LLC ; Project No. 14073–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1421 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 32, LLC	12921–002
Northland Power Mississippi River LLC	14076–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 32, LLC; Project No. 12921–002.
2. Northland Power Mississippi River LLC; Project No. 14076–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1418 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 10, LLC	12866–002
Northland Power Mississippi River LLC	14071–000

On January 17, 2012, the Commission held a drawing to determine priority

among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Northland Power Mississippi River LLC; Project No. 14071–000.

2. FFP Project 10, LLC; Project No. 12866–002.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1417 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

	Project No.
FFP Project 33, LLC	12924–002
Northland Power Mississippi River LLC	14077–000

On January 17, 2012, the Commission held a drawing to determine priority among competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Project 33, LLC; Project No. 12924–002.

2. Northland Power Mississippi River LLC; Project No. 14077–000.

Dated: January 18, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1416 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–47–000]

Chipeta Processing LLC

Notice of Petition for Declaratory Order

Take notice that on January 6, 2012, Chipeta Processing LLC, under Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2012) filed a Petition for Declaratory Order. In its petition, Chipeta requests that the refiguration of the facilities and operations of the Chipeta Plant Complex and the Plant Interconnect Line will continue to perform a non-jurisdictional ''processing'' function as an integral part of the Chipeta Plant Complex and therefore will remain exempt from the Commission's NGA jurisdiction pursuant to the ''production'' exemption in section 1(b) of the NGA.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 6, 2012.

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1464 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–7–000]

Magellan Pipeline Company, L.P.; Notice of Petition for Declaratory Order

Take notice that on December 29, 2011, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2011), Magellan Pipeline Company, L.P. (Magellan) filed a petition for a declaratory order that approves priority committed space and the overall rate structure involving the proposed partial reversal and expansion of Magellan's refined petroleum products pipeline system in Texas to move refined petroleum products from Houston to El Paso, Texas.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (2011)) on or before 5 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's

eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, February 13, 2012.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1462 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13273–001]

Town of Canton; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 4, 2012, the Town of Canton, Connecticut filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Canton Hydroelectric Project (Canton Project or project) to be located on the Farmington River, in the Town of Canton, Hartford County, Connecticut. 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 project would consist of two developments. The Upper Collinsville development would consist of: (1) The 18-foot-high, 325-foot-long stone masonry Upper Collinsville dam with a crest elevation of 289.2 feet above mean sea level (msl); (2) new 3-foot-high flashboards; (3) an existing 55-acre impoundment; (4) an existing gated forebay; (5) an existing 140-foot-long, 50-foot-wide intake canal; (6) an existing brick and masonry powerhouse with two new turbine generating units with a total installed capacity of 1,080 kilowatts (kW); (7) a new 210-kW low flow turbine generating unit located on the east side of the dam; (8) an existing 70-foot-long tailrace; and (9) a new 4.16/23-kilovolt (kV), 200-foot-long transmission line. The Lower Collinsville development would consist of: (1) The 20-foot-high, 300-foot-long concrete gravity Lower Collinsville dam with a crest elevation of 269.7 feet above msl; (2) new 5-foot-high flashboards; (3) an existing 32-acre impoundment; (4) an existing gatehouse and intake structure; (5) an existing 650-foot-long, 50-foot-wide intake canal; (6) an existing brick and masonry powerhouse with two new turbine generating units with a total installed capacity of 876 kW; (7) a new 210-kW low flow turbine generating unit located adjacent to the gatehouse intake; (8) an existing 100-foot-long tailrace; and (9) a new 4.16/23-kV, 750-foot-long transmission line. The estimated annual generation of the Canton Project would be 8,000 megawatt-hours.

Applicant Contact: Paul V. Nolan, Esq., 5515 North 17th Street, Arlington, VA 22205–2722; (703) 534–5509.

FERC Contact: Dr. Nicholas Palso; phone: (202) 502–8854.

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–13273–001) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1471 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–43–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

Take notice that on January 5, 2012, Questar Pipeline Company (Questar), 180 East 100 South, Salt Lake City, Utah 84111 filed a prior notice application pursuant to sections 157.205, 157.208 and 157.210 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act (NGA), and Questar's blanket certificate issued in Docket No. CP82–491–000, to construct, own and operate the upgraded compressor engine at the Blind Canyon Compressor Station located in Duchesne County, Utah, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to L. Bradley Burton, General Manager, Federal Regulatory Affairs and Chief Compliance Officer, Questar Pipeline Company, 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360 or telephone (801) 324–2459 or fax (801) 324–5834 or by email *brad.burton@questar.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 commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1474 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–46–000]

Kinder Morgan Interstate Gas Transmission LLC

Notice of Request Under Blanket Authorization

Take notice that on January 6, 2012, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan), Post Office Box 281304, Lakewood, Colorado 800228–8304, filed in the above Docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.213 of the Commission's regulations under the Natural Gas Act (NGA), for authorization to increase the current certificated maximum injection and withdrawal rates at the Huntsman Storage Facility located in Cheyenne County, Nebraska under Kinder Morgan's blanket certificate issued March 16, 1983 and Docket Nos. CP83–140–100 and CP83–140–001, 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Kinder Morgan states that by a Commission order issued September 30, 2009 in Docket No. CP09–109–000, it was granted authorization to construct and operate additional facilities, the Huntsman 2009 Expansion Project, to increase the capability of the Huntsman Storage Facility. The September 30, 2009 order also authorized Kinder Morgan to increase the injection and withdrawal rates to the currently authorized maximum injection rate of 107 MMcf/d and withdrawal rate of 179.4 MMcf/d. Specifically, Kinder Morgan is requesting authorization to increase the maximum certificated injection rate from 107 MMcf/d to 130 MMcf/d, and to increase the maximum certificated withdrawal rate from 179.4 MMCf/d to 210 MMcf/d.

Any questions concerning this application may be directed to Robert F. Harrington, Vice President, Regulatory, Kinder Morgan Interstate Gas Transmission LLC, P.O. Box 281304, Lake wood, Colorado 80228–8304 at (303) 763–3258.

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 Natural Gas Act (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.

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 (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1476 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

Order No. 1000 Right of First Refusal (ROFR) Workshop

The above-referenced meeting will be held at:

MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–480, *Midwest Independent Transmission System, Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System, Operator, Inc.*

Docket No. EL11–56, *FirstEnergy Service Company.*

Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*

Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC* v. *Midwest Independent Transmission System Operator, Inc.*

Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Christopher Miller, Office of Energy

Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: January 19, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1479 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Intercontinental Stephen F. Austin Hotel, 701 Congress Avenue, Austin, TX 78701. The hotel phone number is (800) 235–4670.

SPP RE

January 30, 2012 (8 a.m.–2 p.m.).

SPP RSC

January 30, 2012 (1 p.m.–5 p.m.).

SPP Board of Directors

January 31, 2012 (8 a.m.–3 p.m.) .

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER10–941, *Southwest Power Pool, Inc.*
Docket No. ER11–3627, *Southwest Power Pool, Inc.*
Docket No. ER11–3958, *Southwest Power Pool, Inc.*
Docket No. ER11–3967, *Southwest Power Pool, Inc.*
Docket No. ER11–4105, *Southwest Power Pool, Inc.*
Docket No. ER12–140. *Southwest Power Pool, Inc.*
Docket No. ER12–430, *Southwest Power Pool, Inc.*
Docket No. ER12–455, *Southwest Power Pool, Inc.*
Docket No. ER12–526, *Southwest Power Pool, Inc.*
Docket No. ER12–528, *Southwest Power Pool, Inc.*
Docket No. ER12–550, *Southwest Power Pool, Inc.*
Docket No. ER12–557, *Southwest Power Pool, Inc.*
Docket No. ER12–608, *Southwest Power Pool, Inc.*
Docket No. ER12–801, *Southwest Power Pool, Inc.*
Docket No. ER11–3728, *Midwest Independent System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent System Operator, Inc.*
Docket No. ER12–600, *Midwest Independent System Operator, Inc.*
Docket No. ER12–739, *Midwest Independent System Operator, Inc.*
Docket No. EL11–34, *Midwest Independent System Operator, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1466 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the New York Independent System Operator, Inc. (NYISO):

Electric System Planning Working Group

January 26, 2012, 10 a.m.–4 p.m., Local Time.

February 7, 2012, 10 a.m.–4 p.m., Local Time.

February 24, 2012, 10 a.m.–4 p.m., Local Time.

Inter-Regional Planning Advisory Committee

March 2012, 8:30 a.m.–12:30 p.m., Local Time (date to be determined).

The above-referenced meetings will be held at: NYISO's offices, Rensselaer, NY.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.nyiso.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. RM10–23, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*
Docket No. ER08–1281, *New York Independent System Operator, Inc.*

For more information, contact James Eason, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–8622 or *James.Eason@ferc.gov.*

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1468 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Entergy Regional State Committee Work Group and Stakeholder Meeting

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below. Their attendance is part of the Commission's ongoing outreach efforts.

Entergy Regional State Committee Working Group and Stakeholders Meeting

January 26, 2012 (9 a.m.–3 p.m.).

This meeting will be held at the Pan American Life Center, 601 Poydras Street, New Orleans, LA 70130.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. EL00–66	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL01–88	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL07–52	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL08–51	Louisiana Public Service Commission v. Entergy Services, Inc.

Docket No. EL08–60	Ameren Services Co. v. Entergy Services, Inc.
Docket No. EL09–43	Arkansas Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–50	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL09–61	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–55	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL10–65	Louisiana Public Service Commission v. Entergy Services, Inc.
Docket No. EL11–34	Midwest Independent System Transmission Operator, Inc.
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1676	Entergy Services, Inc.
Docket No. ER10–2001	Entergy Arkansas, Inc.
Docket No. ER10–3357	Entergy Arkansas, Inc.
Docket No. ER11–2131	Entergy Arkansas, Inc.
Docket No. ER11–2132	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–2133	Entergy Gulf States, Louisiana, LLC
Docket No. ER11–2134	Entergy Mississippi, Inc.
Docket No. ER11–2135	Entergy New Orleans, Inc.
Docket No. ER11–2136	Entergy Texas, Inc.
Docket No. ER11–3156	Entergy Arkansas, Inc.
Docket No. ER11–3657	Entergy Arkansas, Inc.
Docket No. ER12–480	Midwest Independent Transmission System Operator, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1478 Filed 1–24–12; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4628–000]

PJM Interconnection, L.L.C.; Notice of Staff Technical Conference

On December 14, 2011, the Commission issued an order in this proceeding establishing a technical conference to explore the issues presented by PJM Interconnection, L.L.C.'s (PJM) filing.[1] Take notice that the technical conference will be held on February 14, 2012 beginning at approximately 10 a.m. (EDT) at the Commission's headquarters, located at 888 First Street NE., Washington, DC 20426. The conference will consist of a presentation by PJM addressing the questions listed in the December 14 Order interspersed with questions from Commission staff. To expedite the conference, PJM is requested to file written answers to the Commission's questions by February 10, 2012.

All interested parties are invited to attend. Registration is not required.

Parties seeking additional information regarding this conference should contact Tristan Cohen at *Tristan.Cohen@ferc.gov* or (202) 502–6598.

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1465 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *PJM Interconnection, L.L.C.,* 137 FERC ¶ 61,204 (2011) (December 14 Order).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–7–000]

Southwestern Gas Storage Technical Conference

Notice of Public Conference

On December 13, 2011, the Secretary issued formal notice that on February 16, 2012 at 9 a.m. MST, the Staff of the Federal Energy Regulatory Commission (FERC or Commission) will convene a technical conference with interested parties to discuss issues related to natural gas storage development in the southwestern United States, to be held at the Radisson Fort McDowell Resort, 10438 North Fort McDowell Rd., Scottsdale, AZ 85264 (*http://www.radissonfortmcdowellresort.com*).

The notice also requested that persons interested in speaking or making a presentation should indicate their interest no later than January 5, 2012.

The Commission has received such requests to speak from numerous individuals representing diverse interests associated with storage development. In addition, staff has reached out to other individuals representing differing perspectives to ensure that the matters to be discussed represent as broad a spectrum of storage-related matters as possible.

Attached is an agenda for the conference. If you have any questions about the upcoming conference or if you would like additional information, please contact Berne Mosley in the Office of Energy Projects, phone: (202) 502–8700, email: *berne.mosley@ferc.gov.*

Dated: January 18, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–1463 Filed 1–24–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0777; FRL–9329–6]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: ''Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies Reports'' and identified by EPA ICR No. 0575.13 and OMB Control No. 2070–0004, is scheduled to expire on October 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before March 26, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0777, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID Number EPA–HQ–OPPT–2011–0777. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0777. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Leslie Cronkhite, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3878; fax number: (202) 564–4775; email address: *cronkhite.leslie@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it 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 estimates 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.
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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are persons who

manufacture, process, or distribute in commerce chemical substances or mixtures, or who propose to do so.

Title: Health and Safety Data Reporting, Submission of Lists and Copies of Health and Safety Studies Reports.

ICR number: EPA ICR No. 0575.13.

OMB control number: OMB Control No. 2070–0004.

ICR status: This ICR is currently scheduled to expire on October 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 8(d) of the Toxic Substances Control Act (TSCA) and 40 CFR part 716 require manufacturers and processors of chemicals to submit lists and copies of health and safety studies relating to the health and/or environmental effects of certain chemical substances and mixtures. In order to comply with the reporting requirements of section 8(d), respondents must search their records to identify any health and safety studies in their possession, copy and process relevant studies, list studies that are currently in progress, and submit this information to EPA.

EPA uses this information to construct a complete picture of the known effects of the chemicals in question, leading to determinations by EPA of whether additional testing of the chemicals is required. The information enables EPA to base its testing decisions on the most complete information available and to avoid demands for testing that may be duplicative. EPA will use information obtained via this collection to support its investigation of the risks posed by chemicals and, in particular, to support its decisions on whether to require industry to test chemicals under section 4 of TSCA. This information collection request addresses the reporting requirements found in TSCA section 8(d).

Responses to the collection of information are mandatory (see 40 CFR part 716). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 9.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 119.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.2.

Estimated total annual burden hours: 1,364 hours.

Estimated total annual costs: $88,588. This includes an estimated burden cost of $88,588 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is an increase of 908 hours (from 456 hours to 1,364 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's revised basis for the rate of chemical additions, and the episodic nature of rulemakings that add chemicals to the TSCA section 8(d) list. The supporting statement provides additional detail. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 10, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–1221 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2011–0709; FRL–9328–9]

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, titled: ''Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports'' and identified by EPA ICR No. 1884.07 and OMB Control No. 2070–0162, is scheduled to expire on September 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before March 26, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0709, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East, Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. Attention: Docket ID

Number EPA–HQ–OPPT–2011–0709. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0709. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Susan Sharkey, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8789; fax number: (202) 564–4775; email address: *sharkey.susan@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA–Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it 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 estimates 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.

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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline identified under **DATES**.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What information collection activity or ICR does this action apply to?

Affected entities: Entities potentially affected by this ICR are manufacturers, processors or importers of chemical substances, mixtures or categories listed on the TSCA Chemical Inventory and regulated under TSCA section 8.

Title: Partial Update of the TSCA Section 8(b) Inventory Data Base, Production and Site Reports.

ICR number: EPA ICR No. 1884.07.

OMB control number: 2070–0162.

ICR status: This ICR is currently scheduled to expire on September 30, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Toxic Substances Control Act (TSCA) requires EPA to compile and keep current a complete list of chemical substances manufactured or processed in the United States. EPA updates this inventory of chemicals every 4 years by

requiring manufacturers, processors and importers to provide production volume, plant site information and site-limited status information. This information allows EPA to identify what chemicals are or are not currently in commerce and to take appropriate regulatory action as necessary. EPA also uses the information for screening chemicals for risks to human health or the environment, for priority-setting efforts, and for exposure estimates. This ICR addresses the collection of inventory-related information.

Responses to the collection of information are mandatory (see 40 CFR part 711). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 40.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 4,289.

Frequency of response: Once every 4 years.

Estimated total average number of responses for each respondent: 3.7.

Estimated total annual burden hours: 642,823 hours.

Estimated total annual costs: $40,796,621. This includes an estimated burden cost of $40,796,621 and an estimated cost of $0 for capital investment or maintenance and operational costs.

IV. Are there changes in the estimates from the last approval?

There is a decrease of 16,920 hours (from 659,743 hours to 642,823 hours) in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease reflects EPA's revised estimates to the number of affected sites and the number of responses per site, and adjusting burden estimates to capture burden reductions resulting from experiences with past reporting. The Supporting Statement provides additional detail. This change is an adjustment.

V. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: January 10, 2012.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2012–1235 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9623–3; EPA–HQ–ORD–2011–0895]

Draft Research Report: Investigation of Ground Water Contamination near Pavillion, WY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: EPA is announcing a 45-day extension to the public comment period for the external review of the draft research report titled, ''Investigation of Ground Water Contamination near Pavillion, Wyoming'' (FRL–9506–7; 76 FR 77829). The draft research report was prepared by the National Risk Management Research Laboratory, within the EPA Office of Research and Development, and EPA Region 8. This draft research report is not final as described in EPA's Information Quality Guidelines, and does not represent and should not be construed to represent Agency policy or views. Eastern Research Group, Inc., an EPA contractor for external peer review, will convene an independent panel of experts for peer review of this draft research report. Public comments submitted during the public comment period will be made available to the peer review panel for consideration in their review. An external peer review meeting will take place following the public comment period. An additional **Federal Register** notice will be published about one month prior to the meeting to provide the meeting date, location, and registration information. Additional details about the peer review process can be found at: *http://cfpub.epa.gov/si/si_public_pra_view.cfm?dirEntryID=240345.*

DATES: The public comment period began December 14, 2011, and ends March 12, 2012. Comments should be submitted to the docket or received in writing by EPA by March 12, 2012.

ADDRESSES: The draft ''Investigation of Ground Water Contamination near Pavillion, Wyoming.'' is available via the Internet on the EPA Region 8 site at: *http://www.epa.gov/region8/superfund/wy/pavillion/EPA_ReportOnPavillion_Dec-8–2011.pdf.*

Comments may be submitted electronically via *http://www.regulations.gov,* by email, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

Additional Information: For information on the docket, *www.regulations.gov,* or the public comment period, please contact the Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 566–1752; facsimile: (202) 566–1753; or email: *ORD.Docket@epa.gov.*

For information on the draft report, please contact Rebecca Foster, U.S. Environmental Protection Agency, P.O. Box 1198, Ada, OK 74821; telephone: (580) 436–8750; facsimile: (580) 436–8529; or email: *foster.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information about Pavillion Ground Water Investigation

Pavillion, Wyoming is located in Fremont County, about 20 miles northwest of Riverton. The concern at the site is potential ground water contamination, based on resident complaints about smells, tastes, and adverse changes in water quality of their domestic wells. In collaboration with ORD, Region 8 has been conducting a ground water investigation. The purpose of this ground water investigation is to better understand the basic ground water hydrology and how the constituents of concern may be occurring in the aquifer. More information is available at *http://www.epa.gov/region8/superfund/wy/pavillion/.*

II. How to Submit Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2011–0895, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ORD.Docket@epa.gov.*
- *Facsimile:* (202) 566–1753.
- *Mail:* Office of Environmental Information Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The telephone number is (202) 566–1752. If you provide comments by mail, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by hand delivery, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2011–0895. Please ensure that your comments are submitted within the specified comment period. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov,* including any personal information provided, unless comments include information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send email comments directly to EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comments that are placed in the public docket and made available on the Internet. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disk or CD–ROM you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: January 18, 2012.

Cynthia Sonich-Mullin,

Director, National Risk Management Research Laboratory.

[FR Doc. 2012–1517 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OCS–EPA–R4006; FRL–9623–1]

Notice of Issuance of Final Outer Continental Shelf Air Permit for Shell Offshore, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice is to announce that on November 30, 2011, EPA issued a final Outer Continental Shelf (OCS) air permit for Shell Offshore, Inc. (Shell). This permit became effective on December 30, 2011. The permit will regulate air pollutant emissions from one of three deepwater drilling vessels (the Transocean *Deepwater Nautilus,* the *Noble Bully I* or the *Noble Bully II*) and support vessels to conduct exploratory drilling for up to 150 days per year over five to ten years in multiple locations within Shell's DeSoto Canyon and Lloyd Ridge lease locations on the OCS in the Gulf of Mexico, approximately 160 miles southeast of the mouth of the Mississippi River and greater than 200 miles southwest of Panama City, Florida.

ADDRESSES: The final permit, EPA's response to the public comments, and additional supporting information are available at *http://www.epa.gov/region4/air/permits/OCSPermits/ShellOCS.html.* Copies of the final permit and EPA's response to comments are also available for review at the EPA Regional Office and upon request in writing. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your review of the records. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Lori Shepherd, Air Permits Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–8435. Ms. Shepherd can also be reached via electronic mail at *shepherd.lorinda@epa.gov.*

SUPPLEMENTARY INFORMATION: On August 19, 2011, the EPA Region 4 Office requested public comments on a proposal to issue an OCS air permit for Shell. During the public comment period, which ended on September 19, 2011, EPA received comments from Shell and from ConocoPhillips Company regarding the project. EPA carefully reviewed each of the

comments submitted and, after consideration of the expressed view of all interested persons, the pertinent federal statutes and regulations, and additional material relevant to the application and contained in the administrative record, EPA made a decision in accordance with title 40 CFR 52.21, 40 CFR part 71 and 40 CFR part 55 to issue a final OCS permit.

Under 40 CFR 124.19(f)(2), notice of any final Agency action regarding a prevention of significant deterioration (PSD) permit must be published in the **Federal Register**. Section 307(b)(1) of the Clean Air Act (CAA) provides for review of final Agency action that is locally or regionally applicable in the United States Court of Appeals for the appropriate circuit. Such a petition for review of final Agency action must be filed within 60 days from the date of notice of such action in the **Federal Register**. For purposes of judicial review under the CAA, final Agency action occurs when a final PSD permit is issued or denied by EPA and Agency review procedures are exhausted per 40 CFR 124.19(f)(1). Any person who filed comments on the draft permit was provided the opportunity to petition the Environmental Appeals Board by December 30, 2011. No petitions were submitted; therefore the permit became effective on December 30, 2011.

Dated: January 12, 2012.

Beverly H. Banister,

Director, Air, Pesticides and Toxics Management Division.

[FR Doc. 2012–1506 Filed 1–24–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to support the export of approximately $750 million in U.S. petrochemical manufacturing equipment and services for the construction of a new petrochemical facility in Mexico. The financed amount associated with the U.S. export contract, including local cost and interest during construction, is expected to total approximately $900 million. Ex-Im Bank may also be requested to provide up to $400 million of additional financing should a co-financing structure with the Italian ECA materialize.

The U.S. exports will enable the Mexican petrochemical facility to produce approximately 750,000 metric tons of high-density polyethylene (HDPE) and 300,000 metric tons of low-density polyethylene (LDPE) annually. The Mexican petrochemical producer plans to sell its products primarily within Mexico, and also to the U.S., Central America, and South America.

Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–1513 Filed 1–24–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before March 26, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0912.

Title: Sections 76.501, 76.503 and 76.504, Cable Attribution Rules.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities

Number of Respondents and Responses: 40 respondents; 40 responses.

Estimated Time per Response: 1 to 4 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 100 hours.

Total Annual Costs: None.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i) and 613(f) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 76.501 Notes 2(f)(1) and 2(f)(3); 47 CFR 76.503 Note 2(b)(3); 47 CFR 76.504 Note 1(b)(1) requires limited partners, Registered Limited Liability Partnerships (''RLLPs''), and Limited Liability Companies (''LLCs'') attempting to insulate themselves from attribution to file a certification of ''non-involvement'' with the Commission. LLCs who submit the non-involvement certification are also required to submit a statement certifying that the relevant state statute authorizing LLCs permits an LLC member to insulate itself in the manner required by our criteria.

Sections 76.501 Note 2, 76.503 Note 2, and 76.504 Note 1, also provides that officers and directors of an entity are considered to have a cognizable interest in the entity with which they are

associated. If any such entity engages in businesses in addition to its primary media business, it may request the Commission to waive attribution for any officer or director whose duties and responsibilities are wholly unrelated to its primary business. The officers and directors of a parent company of a media entity with an attributable interest in any such subsidiary entity shall be deemed to have a cognizable interest in the subsidiary unless the duties and responsibilities of the officer or director involved are wholly unrelated to the media subsidiary and a statement properly documenting this fact is submitted to the Commission. This statement may be included on the Licensee Qualification Report.

47 CFR 76.503 Note 2(b)(1) includes a requirement for limited partners who are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the partnership to certify that fact or be attributed to a limited partnership interest.

47 CFR 76.503(g) states ''Prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of licenses at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.''

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–1504 Filed 1–24–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreement are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012061–003.

Title: CMA CGM/Maersk Line Space Charter, Sailing and Cooperative Working Agreement Western Mediterranean-U.S. East Coast.

Parties: CMA CGM, S.A. and A.P. Moller-Maersk A/S.

Filing Party: Mark E. Newcomb, Esq.; CMA CGM America, LLC; 5701 Lake Wright Drive, Norfolk, VA 23502–1868.

Synopsis: The amendment revises the agreement scope to include U.S. Gulf ports.

By Order of the Federal Maritime Commission.

Dated: January 20, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–1557 Filed 1–24–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Advance Container Line LLC (NVO), 254 Canal Street, Suite 5002, New York, NY 10013. Officers: Chris X. Chou, President/Vice President/Secretary (Qualifying Individual), Yiu Cheung Wong, Treasurer. Application Type: New NVO License.

Airport Clearance Service, Inc. dba ACS Lines (NVO & OFF), 370 West Passaic Street, Suite 3000, Rochelle Park, NJ 07662. Officers: Robert Schumann, COO/Chief Operating Officer (Qualifying Individual), Brian Posthumus, President/CEO. Application Type: QI Change.

Alpha Florida Trade, LLC (NVO & OFF), 2930 NW 108th Avenue, #2930, Doral, FL 33172. Officer: Audric A. Nadal, President (Qualifying Individual), Application Type: New NVO & OFF License.

C. Hartwig Gdynia dba C. Hartwig Transport (NVO), 7, Derdowskiego Street, 81–369 Gdynia, Poland. Officers: Anna Zadroga, Customer Service Manager, Teresa Dabrowska, NVOCC Coordinator (Qualifying Individuals). Application Type: QI Change.

Centro Marine Freight Forward, LLC (OFF), 155 S. Kingsley Drive, Los Angeles, CA 90004. Officers: Ana Serrano, Director (Qualifying Individual), Victor Ortiz, Manager. Application Type: New OFF License.

Cheryl G. Wilson dba JC Logistics (NVO & OFF), 28612 Redondo Beach Drive South, Des Moines, WA 98198. Officer: Cheryl G. Wilson, Sole Proprietor (Qualifying Individual). Application Type: Add NVO Service.

CR & J Logistics, Inc. dba Brightwater Shipping Services (NVO & OFF), 8401 Lake Worth Road, #121, Lake Worth, FL 33467. Officers: Antonio Rente, Vice President (Qualifying Individual), Ronald S. Penn, President. Application Type: New.

Eagle Trans Shipping & Logistics LLC (NVO & OFF), Hoboken Business Center, 50 Harrison Street, Suite 301, Hoboken, NJ 07030. Officers: Debora A. Sacco-Alterisio, Manager (Qualifying Individual), Harbans S. Shrikant, Member. Application Type: QI Change.

Easyway International, LLC (NVO & OFF), 1209 Orange Street, Wilmington, DE 19801. Officers: Frank Xu, Member (Qualifying Individual), Wenliang Xu, Member. Application Type: New NVO & OFF License.

Eurotrans Systems, Inc. (NVO), 299 Broadway, Suite 1815, New York, NY 10007. Officers: Colin J. D'Abreo, Executive Vice President (Qualifying Individual), Juergen Osmers, Director. Application Type: QI Change.

Guaranteed International Freight and Trade Inc. (NVO & OFF), 1271 Ralph Avenue, Brooklyn, NY 11234. Officers: Lawrence N. Medas, Manager (Qualifying Individual), Cornelius L. Medas, CEO. Application Type: New NVO & OFF License.

H.A.B. International, Inc. (NVO), 8513 NW 72nd Street, Miami, FL 33166. Officers: Harold A. Beharry, President/Treasurer (Qualifying Individual), Brehaspati Beharry, Vice President/Secretary. Application Type: New NVO License.

HNM Enterprises LLC dba HNM Global Logistics (NVO & OFF), 3714A Silver Star Road, Orlando, FL 32808. Officers: John Summey, Manager (Qualifying Individual), Tony McGee, Manager Member. Application Type: New NVO & OFF License.

Joseph P. Solomon dba Equitorial Import-Export (OFF), 14810 Greenwood Avenue North, Shoreline, WA 98133. Officer: Joseph P.

Solomon, Sole Proprietor (Qualifying Individual). Application Type: New OFF License.

Kamino International Transport, Inc. dba Kamino Ocean Line (NVO & OFF), 145th Avenue & Hook Creek Blvd., Valley Stream, NY 11581. Officers: Mark Bongean, Vice President Operations (Qualifying Individual), Sebastian Tschackert, CEO. Application Type: New NVO & OFF License.

Kog Transport, Inc. (OFF), 299 Broadway, Suite 1815, New York, NY 10007. Officers: Colin J. D'Abreo, Executive Vice President (Qualifying Individual), Juergen Osmers, Director. Application Type: QI Change.

Omega Cargo, Inc. (NVO), 11159 NW 122nd Street, Medley, FL 33178. Officer: Luis E. Vicent, President/Secretary/Treasurer (Qualifying Individual), Application Type: New NVO License.

Seagull Maritime Agencies Private Limited (NVO), F–35/3, Okhla Industrial Area, Phase II, New Delhi 110020 India. Officers: Parveen Mehta, Vice President (Ocean Transportation) (Qualifying Individual), Sidhartha C. Jena, President/Secretary/Treasurer. Application Type: QI Change.

Sky Link NY, Inc. (NVO), 167–43 148th Avenue, 2nd Floor, Jamaica, NY 11434. Officers: Min Joo Lee, President (Qualifying Individual), Young Lee, Secretary. Application Type: New NVO License.

Sunshine Express Line, Inc. (NVO), 8433 NW. 68th Street, Miami, FL 33166. Officers: Donna Coronel, Vice President (Qualifying Individual), Raymond J. Thompson, President. Application Type: QI Change.

Super Trading LLC dba Harry Shipping (OFF), 1810 Riverside Avenue, Bailey Building, Minneapolis, MN 55454. Officers: Simmarjit Singh, Chairman/President/Treasurer (Qualifying Individual), Baljinder Kaur, Secretary. Application Type: New OFF License.

Swift Customs House Brokers LLC dba Swift Worldwide Logistics, LLC (NVO & OFF), 12355 SW. 18th Street, Suite 112, Miami, FL 33175. Officers: Rolando Ayala, President/Managing Director (Qualifying Individual), Gladys G. Rodriguez, Executive Vice President. Application Type: New NVO & OFF License.

Unique Logistics International (NYC), LLC (NVO & OFF) 154–09 146th Avenue, 3rd Floor, Unit B, Jamaica, NY 11434. Officers: Sunadan Ray, President/CEO, Ri Hua Zhuo Mawhinney, Assistant Secretary (Qualifying Individuals). Application Type: Add OFF Service.

Vip Cargo Services Limited Liability Company (NVO), 14 Mountain Avenue, North Plainfield, NJ 07060–4127. Officer: Raja E. Ahmed, Member/President (Qualifying Individual). Application Type: New NVO License.

Vision Shipping, Inc. (NVO & OFF), 4900 Leesburg Pike, #401, Alexandria, VA 22302. Officer: Husam F. Atari, President (Qualifying Individual). Application Type: New NVO & OFF License.

Dated: January 20, 2012.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2012–1559 Filed 1–24–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 21, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Sandy Spring Bancorp., Inc.,* Olney, Maryland; to merge with Commerce First Bancorp, Inc., and thereby indirectly acquire 100 percent of the voting shares of CommerceFirst Bank, both in Annapolis, Maryland.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *River Valley Bancorp,* Madison, Indiana; to become a bank holding company by acquiring Dupont State Bank, Dupont, Indiana. River Valley Financial Bank, Madison, Indiana, the existing thrift subsidiary of Applicant, will merge with Dupont State Bank, Dupont, Indiana, as part of the transaction.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *MinnDak Bancshares, Inc.,* Park Rapids, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Kent Bancshares, Inc., and thereby indirectly acquire Kent State Bank, both in Kent, Minnesota.

D. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *New West Banks of Colorado, Inc. Employee Stock Ownership Plan Trust,* Greeley, Colorado; to become a bank holding company by acquiring up to 30 percent of the voting shares of New West Banks of Colorado, Inc., and thereby acquire shares of New West Bank, both in Greeley, Colorado.

Board of Governors of the Federal Reserve System, January 20, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–1524 Filed 1–24–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Trade Commission.

TIME AND DATE: 2 p.m. Monday, February 6, 2012.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue NW., Washington, DC 20580.

STATUS: Part of this meeting will be open to the public. The rest of the meeting will be closed to the public.

Matters To Be Considered

Portion Open to the Public

(1) Oral Argument in ProMedica Health System, Inc. Docket 9346.

Portion Closed to the Public

(2) Executive Session to follow Oral Argument in ProMedica Health System, Inc., Docket 9346.

CONTACT PERSON FOR MORE INFORMATION: Mitch Katz, Office of Public Affairs (202) 326–2180. Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 2012–1365 Filed 1–24–12; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[Notice-PBS–2012–01; Docket 2012–0002; Sequence 1]

Notice of Availability of the Environmental Assessment for Proposed Federal Building Kansas City, MO

AGENCY: General Services Administration (GSA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability, and opportunity for public review and comment, of a draft environmental assessment (EA), that analyzes the environmental impacts of constructing and operating a proposed new Downtown Federal Building in Kansas City, Missouri. Through the project, GSA proposes to relocate its current operations from the Bannister Federal Complex in Kansas City, Missouri, and co-locate with other federal tenants at a proposed new Downtown Federal Building. The target property(ies) subject to this proposed action are those within an area bounded by 11th Street on the North, 12th Street on the South, Charlotte Street on the East, and Cherry Street on the West (known as city blocks 99 and 100), and could also include some level of development of 701 E. 12th Street, bounded by 12th Street on the North, 13th Street on the South, Holmes Street on the West and Charlotte Street on the East. City blocks 99 and 100 lie within the downtown East Village development and tax increment financing (TIF) district, on the East-side of downtown, in Missouri's 5th Congressional District. In the EA, GSA discusses impacts that could occur as a result of the construction and operation of the proposed project. GSA also evaluates a ''No Action'' and other reasonable alternatives to the proposed project, or portions of the project, and considers how to lessen or avoid impacts on the various resource areas.

DATES: *Effective date:* January 25, 2012.

Comment Date: Interested parties should submit written comments to the Regulatory Secretariat on or before February 24, 2012 to be considered in the formation of the EA.

ADDRESSES: Submit comments identified by ''Notice-PBS–2012–01'', by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Notice-PBS–2012–01'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Notice-PBS–2012–01.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Notice-PBS–2012–01'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), Attn: Hada Flowers/Notice-PBS–2012–01, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite ''Notice-PBS–2012–01'', in all correspondence related to this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

Request for copies of the draft EA: Contact Mr. Jeremiah Nelson, General Services Administration, 1500 East Bannister Road, Room 2191 (6PTA), Kansas City, MO 64131 or via email to *jeremiah.nelson@gsa.gov.* Verbal requests for copies of the draft EA may also be made by calling Jeremiah Nelson at (816) 823–5803. A copy of the EA may also be obtained by visiting the gsa.gov Web site: *http://www.gsa.gov/portal/content/211853.*

SUPPLEMENTARY INFORMATION:

General: This EA is being prepared pursuant to the National Environmental Policy Act, 42 U.S.C. 4321, (NEPA), and regulations implementing NEPA issued by the Council on Environmental Quality (40 CFR 1500–1508), GSA ADM 1095.1, the GSA PBS NEPA Desk Guide and other applicable regulations and policies. The EA will inform GSA in its decision-making process. Compliance with the National Historic Preservation Act (NHPA), including NHPA Section 106, and other laws and requirements, will be coordinated with this EA process, and government agencies that are affected by the proposed actions or have special expertise will be consulted, whether or not they are cooperating agencies. An independent analysis of the issues will be presented in the EA. The EA will be placed in the public record after the public comment period. GSA will consider all comments on the EA before making a final decision.

Purpose of Notice: The purpose of this notice is to (1) announce the availability of the EA for public comment; (2) invite public participation during the commenting period, and (3) request public comments on the draft EA, including the potential environmental impacts associated with the proposed action.

Further Information on Public Participation and Dates: The public is encouraged to provide GSA with specific comments or concerns about the project. Comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. In addition to the above methods for submission of comments, those interested may also file a paper copy of comments, by regular mail, to Jeremiah Nelson, GSA Region 6 NEPA Coordinator, 1500 E. Bannister Road, Room 2135, Kansas City, Missouri 64131 or verbally offer comments to GSA's Region 6 NEPA Coordinator by calling (816) 823–5803. Again, comments should be sent to GSA on or before February 17, 2012. With any comments, before including address, phone number, email address, or other personal identifying information in your comment, be advised that the entire comment, including personal identifying information, may be made publicly available at any time. While you can ask in your comment to withhold from public review personal identifying information, GSA cannot guarantee that it will be able to do so.

State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Dated: January 19, 2012.

Kevin D. Rothmier,

Director of Portfolio Management (6PT), U.S. General Services Administration, PBS, Heartland Region.

[FR Doc. 2012–1429 Filed 1–24–12; 8:45 am]

BILLING CODE 6820–CG–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0592]

Yuri Izurieta: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The U.S. Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Yuri Izurieta for a period of 20 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Izurieta was convicted of six felony counts under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Izurieta was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of November 10, 2011 (30 days after receipt of the notice), Mr. Izurieta had not responded. Mr. Izurieta's failure to respond constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective January 25, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Compliance Policy (HFC–230), Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, (301) 796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits FDA to debar an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by Section 306(b)(3)(A) of the FD&C Act (21 U.S.C. 335a(b)(3)(A)), that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food.

On May 11, 2011, in the United States District Court for the Southern District of Florida, Mr. Izureita was convicted of one count of conspiracy to smuggle goods into the United States, in violation of 18 U.S.C. 371, and five counts of smuggling goods into the United States, in violation of 18 U.S.C. 545. The United States District Court for the Southern District of Florida entered judgment against Mr. Izurieta on July 29, 2011.

FDA's finding that debarment is appropriate is based on the felony conviction's referenced herein for conduct relating to the importation into the United States of any food. The factual basis for these convictions is as follows: As alleged in the indictment that was filed against Mr. Izurieta, beginning on or about April 18, 2007, and continuing through about December 23, 2010, in violation of 18 U.S.C. 371, Mr. Izurieta knowingly, and with the intent to further the object of the conspiracy, conspired with others to commit an offense against the United States—to fraudulently and knowingly import and bring into the United States merchandise contrary to law, in violation of 18 U.S.C. 545. Specifically, Mr. Izurieta conspired to distribute and sell imported dairy products that FDA had detained after receiving notice from FDA that the dairy products were suspected to be adulterated.

Mr. Izurieta worked at Naver Trading Corp., a registered Florida corporation engaged in the business of importing and distributing food, including dairy products, in local and interstate commerce. While working there, Mr. Izurieta caused dairy products and other food to be imported from Honduras and Nicaragua. Despite requests from FDA, Mr. Izurieta failed to disclose the location of shipments of dairy products after learning that FDA had slated specific shipments for examination due to concerns of adulteration with *Escherichia coli, Staphylococcus aureus,* and *Salmonella.* Mr. Izurieta also distributed shipments of dairy products after learning that FDA had slated specific shipments for examination due to concerns of adulteration with *E. coli, S. aureus,* and *Salmonella.* Mr. Izurieta failed to redeliver for destruction and exportation shipments of dairy products that FDA had determined to be adulterated with *E. coli, S. aureus,* and *Salmonella,* and that were not authorized for entry into the United States. Mr. Izurieta then imported and distributed dairy products that were adulterated and not authorized for entry into the United States. This conduct was in violation of 18 U.S.C. 545.

From approximately April 18, 2007, and continuing to approximately December 7, 2010, Mr. Izurieta fraudulently and knowingly imported and brought into the United States merchandise contrary to law. Further, Mr. Izurieta failed to redeliver, export, and destroy with FDA supervision the dairy products and other food products contained in these shipments after receiving notice from FDA regarding concerns about the adulteration of these products with *E. coli, S. aureus,* and/or *Salmonella.*

As a result of his conviction, on September 28, 2011, FDA sent Mr. Izurieta a notice by certified mail proposing to debar him for a period of 20 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Izurieta was convicted of six felony counts under Federal law for conduct relating to the importation into the United States of an article of food because he conspired to commit offenses related to the importation of dairy products into the United States and imported and brought into the United States merchandise contrary to law. It was also based on a determination, after consideration of the factors set forth in section 306(c)(3) of the FD&C Act (21 U.S.C. 335a(c)(3)) that Mr. Izurieta should be subject to a 20-year period of debarment. The proposal also offered Mr. Izurieta an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Izurieta failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(1)(C) of the FD&C Act, and under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Mr. Yuri Izurieta has been convicted of six felony counts under Federal law for conduct relating to the importation of an article of food into the United States and that he is subject to 20 years of debarment.

As a result of the foregoing finding, Mr. Izurieta is debarred for a period of 20 years from importing articles of food or offering such articles for import into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Mr. Izurieta is a prohibited act.

Any application by Mr. Izurieta for termination of debarment under section 306(d)(1) (21 U.S.C. 335a(d)(1)) of the FD&C Act should be identified with Docket No. FDA–2011–N–0592 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 11, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–1489 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369; (Formerly Docket No. 2007D–0168)]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of May 31, 2007 (72 FR 30386), FDA announced the availability of a draft guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' explaining the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by March 26, 2012.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Doan T. Nguyen, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–8608.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 31, 2007, FDA announced the availability of a draft guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that draft guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on the FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of December 1, 2009 (74 FR 62793). This notice announces draft product-specific recommendations, either new or revised, that have been posted on the FDA's Web site in the period from December 1, 2009, through June 30, 2011.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing draft BE product-specific recommendations for drug products containing the following active ingredients:

A

Acetaminophen
Acetaminophen; Butalbital (multiple reference listed drugs (RLDs))
Acetaminophen; Butalbital; Caffeine (multiple RLDs)
Acetaminophen; Hydrocodone Bitartrate (multiple RLDs)
Acetaminophen Oxycodone (multiple RLDs)
Acetazolamide
Adapalene
Aliskiren Hemifumarate; Valsartan
Altretamine
Amantadine HCl (multiple RLDs)
Amiodarone HCl
Amitriptyline HCl (multiple RLDs)
Amlodipine Besylate; Telmisartan
Amlodipine; Hydrochlorothiazide; Valsartan
Amoxicillin; Clavulanate Potassium (multiple RLDs)
Aripiprazole
Aspirin; Butalbital; Caffeine (multiple RLDs)
Aspirin; Dipyridamole
Aspirin; Oxycodone
Aspirin; Butalbital; Caffeine; Codeine Phosphate
Atovaquone
Auranofin
Azelaic Acid (multiple RLDs)

B

Baclofen (multiple RLDs)
Benazepril HCl
Benzoyl Peroxide Clindamycin Phosphate (multiple RLDs)
Benzoyl Peroxide; Erythromycin (multiple RLDs)
Betamethasone Acetate; Sodium Phosphate
Betamethasone Dipropionate; Calcipotriene Hydrate (multiple RLDs)
Betamethasone Dipropionate; Clotrimazole
Betamethasone; Clotrimazole
Bexarotene
Bosentan
Buprenorphine HCl
Buprenorphine HCl; Naloxone HCl
Bupropion HBr
Bupropion HCl
Buspirone
Butoconazole Nitrate (multiple RLDs)

C

Calcipotriene (multiple RLDs)
Carbidopa; Levodopa
Carisoprodol
Carvedilol Phosphate
Cefaclor
Cefadroxil; Cefadroxil Hemihydrate
Cefditoren Pivoxil
Cefixime
Cefuroxime Axetil (multiple RLDs)
Cetirizine HCl
Chlorambucil
Chlorpheniramine Polistirex; Hydrocodone Polistirex

Chlorthalidone (multiple RLDs)
Choline Fenofibrate (multiple RLDs)
Ciclopirox (multiple RLDs)
Ciprofloxacin HCl (multiple RLDs)
Clarithromycin
Clindamycin Phosphate (multiple RLDs)
Clobetasol Propionate (multiple RLDs)
Clonazepam
Clonidine
Clotrimazole (multiple RLDs)
Clozapine
Colchicine
Colesevelam HCl
Cyclobenzaprine

D

Dapsone (multiple RLDs)
Darunavir Ethanolate
Dexamethasone
Dexamethasone; Tobramycin
Dexlansoprazole
Diazepam
Diclofenac Potassium
Diclofenac Sodium (multiple RLDs)
Dienogest; Estradiol Valerate
Diethylpropion
Diphenhydramine; Ibuprofen
Disulfiram (multiple RLDs)
Divalproex Sodium
Dolasetron Mesylate
Donepezil HCl
Doxazosin Mesylate
Doxepin HCl (multiple RLDs)
Doxorubicin HCl
Dronabinol
Dronedarone HCl

E

Econazole Nitrate
Ergocalciferol
Erythromycin (multiple RLDs)
Erythromycin Ethylsuccinate; Sulfisoxazole Acetyl
Esomeprazole Magnesium
Esomeprazole Magnesium; Naproxen
Estradiol (multiple RLDs)
Estrogens Conjugated Synthetic A
Ethacrynic Acid
Ethinyl Estradiol; Norethindrone
Ethinyl Estradiol; Norethindrone Acetate
Ethinyl Estradiol; Norgestimate (multiple RLDs)
Etodolac
Etoposide
Everolimus

F

Febuxostat
Felodipine
Fenofibrate
Fenofibric Acid
Fentanyl Citrate
Fesoterodine Fumarate
Finasteride
Flucytosine
Fluorouracil (multiple RLDs)
Fluoxetine HCl (multiple RLDs)
Fluticasone Propionate
Fluvoxamine Maleate
Furosemide

G

Galantamine HBr
Gemfibrozil
Glipizide
Griseofulvin
Griseofulvin Microcrystalline
Guanfacine HCl

H

Hydrochlorothiazide; Moexipril
Hydrochlorothiazide; Spironolactone
Homatropine Methylbromide; Hydrocodone Bitartrate
Hydralazine; Isosorbide
Hydrochlorothiazide
Hydrochlorothiazide; Quinapril HCl
Hydrocodone; Ibuprofen (multiple RLDs)
Hydromorphone HCl
Hydroxychloroquine
Hydroxyzine HCl (multiple RLDs)

I

Ibuprofen (multiple RLDs)
Iloperidone
Imipramine Pamoate
Imiquimod (multiple RLDs)
Indomethacin (multiple RLDs)

K

Ketoconazole

L

Labetalol HCl
Lamotrigine
Lansoprazole
Lapatinib Ditosylate
Lenalidomide
Leuprolide Acetate (multiple RLDs)
Levetiracetam
Levonorgestrel
Lithium Carbonate (multiple RLDs)
Loratadine; Pseudoephedrine Sulfate
Lorazepam
Loteprednol
Lubiprostone

M

Maraviroc
Meclizine
Meclizine HCl
Mefenamic Acid
Megestrol Acetate (multiple RLDs)
Mestranol; Norethindrone
Metformin HCl; Pioglitazone HCl
Methimazole
Methoxsalen (multiple RLDs)
Methylphenidate
Methylphenidate HCl
Methylprednisolone
Metoclopramide HCl
Metolazone
Metoprolol Tartrate; Hydrochlorothiazide
Metronidazole (multiple RLDs)
Mifepristone
Milnacipran HCl
Minocycline HCl
Minoxidil (multiple RLDs)
Mirtazapine
Misoprostol
Molindone HCl
Morphine Sulfate (multiple RLDs)
Mupirocin
Mupirocin Calcium (multiple RLDs)
Mycophenolate Mofetil

N

Naltrexone HCl
Naproxen
Naproxen Sodium
Naproxen Sodium; Sumatriptan Succinate
Nebivolol
Niacin; Simvastatin
Nicotine Polacrilex
Nifedipine
Nilotinib HCl Monohydrate
Nitroglycerin (multiple RLDs)
Nystatin (multiple RLDs)

O

Octreotide
Ofloxacin
Orlistat (multiple RLDs)
Orphenadrine Citrate
Oseltamivir Phosphate (multiple RLDs)
Oxybutynin
Oxycodone
Oxycodone HCl (multiple RLDs)
Oxymetholone

P

Palonosetron HCl
Pantoprazole Sodium
Paroxetine
Penbutolol
Penicillin V Potassium
Perphenazine (multiple RLDs)
Phenelzine Sulfate
Phytonadione
Pioglitazone HCl
Pitavastatin
Potassium Citrate
Pramipexole Dihydrochloride
Prasugrel HCl
Prednisolone Acetate
Progesterone
Promethazine HCl (multiple RLDs)
Propafenone HCl
Propranolol HCl
Protriptyline HCl
Pseudoephedrine HCl

R

Rabeprazole Sodium
Ranitidine HCl
Ranolazine
Rifabutin
Risedronate
Risperidone (multiple RLDs)
Ritonavir
Rivastigmine
Ropinirole HCl

S

Sevelamer Carbonate
Sitagliptin Phosphate
Sotalol (multiple RLDs)
Spironolactone
Sulfacetamide Sodium
Sulfasalazine (multiple RLDs)
Sunitinib Malate

T

Tapentadol HCl
Tazarotene (multiple RLDs)
Terbinafine HCl
Terconazole (multiple RLDs)
Tetracycline
Theophylline (multiple RLDs)
Tioconazole
Tizanidine HCl
Topotecan
Tranexamic Acid
Trazodone HCl (multiple RLDs)
Tretinoin
Triamcinolone Acetonide (multiple RLDs)
Triazolam
Trimethoprim

U

Ursodiol

V

Valproic Acid
Venlafaxine HCl
Verapamil HCl

W

Warfarin Sodium

Z

Zolmitriptan
Zolpidem

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft BE product-specific recommendations for drug products containing the following active ingredients. These recommendations were previously posted on the FDA's Web site:

A

Amantadine HCl
Atorvastatin

B

Bupropion HBr

C

Calcipotriene
Calcium Acetate
Calcitriol
Capecitabine (multiple RLDs)
Cefditoren Pivoxil
Ciclopirox
Clotrimazole
Colesevelam HCl (multiple RLDs)

D

Darunavir Ethanolate
Desogestrel; Ethinyl Estradiol
Desvenlafaxine Succinate
Diclofenac Sodium
Diclofenac Sodium; Misoprostol
Disulfiram
Donepezil HCl (multiple RLDs)

E

Emtricitabine
Esomeprazole Magnesium
Estradiol
Ethinyl Estradiol; Ethynodiol Diacetate (multiple RLDs)
Ethinyl Estradiol; Norethindrone

F

Felbamate (multiple RLDs)
Fentanyl
Fentanyl Citrate
Fluorouracil (multiple RLDs)

G

Glyburide Metformin
Granisetron HCl

L

Labetalol HCl
Lamotrigine (multiple RLDs)
Lapatinib Ditosylate
Levofloxacin
Levonorgestrel (multiple RLDs)
Linezolid

M

Memantine HCl
Mercaptopurine (multiple RLDs)
Metformin HCl (multiple RLDs)
Minoxidil
Morphine

N

Nebivolol
Niacin
Nilutamide
Nitroglycerin

O

Omeprazole
Orlistat (multiple RLDs)
Oxymorphone HCl

P

Prednisolone
Progesterone

R

Rivastigmine
Rivastigmine Tartrate
Ropinirole

S

Scopolamine
Sevelamer Carbonate (multiple RLDs)
Sevelamer HCl (multiple RLDs)
Sirolimus

T

Telmisartan
Tiagabine HCl
Topiramate
Tranexamic Acid
Triamcinolone Acetonide (multiple RLDs)

V

Varenicline Tartrate
Venlafaxine HCl

For a complete history of previously published **Federal Register** notices, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The guidance, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: January 19, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1433 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1999–D–4079 (Formerly Docket No. 1999D–0254)]

Guidance for Industry on Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled ''Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling.'' The guidance is intended to clarify for applicants the requirements for product name placement, size, prominence, and frequency in promotional labeling and advertising for prescription human and animal drugs and biological products. This guidance finalizes the draft guidance published in January 1999.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding Human Prescription Drugs

Ernest S. Voyard, Jr., Center for Drug Evaluation and Research, Food and Drug Administration, 10903 Hampshire Ave., Bldg. 51, Rm. 3276, Silver Spring, MD 20993, (301) 796–1200.

Regarding Prescription Human Biological Products

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, (301) 827–6210.

Regarding Animal Prescription Drugs

Julie Garnier, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, (240) 276–9300.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance document entitled ''Product Name Placement, Size, and Prominence in Advertising and Promotional Labeling.'' This guidance discusses the requirements for product name placement, size, prominence, and frequency in promotional labeling and advertising for prescription human and animal drugs and biological products. The disclosure of the product name in promotional labeling and advertising for all prescription human and animal drug and biological products is important for the proper identification of such products to ensure their safe and effective use.

The placement, size, prominence, and frequency of the proprietary and established names for human and animal prescription drug products are specified in labeling and advertising regulations (21 CFR 201.10(g) and (h); 202.1(b), (c), and (d)). These regulations are also applicable to biological product labeling and advertising materials.

The recommendations in this guidance pertain to product names in traditional print media promotion (e.g., journal ads, detail aids, brochures), audiovisual promotional labeling (e.g., videos shown in a health care provider's office), broadcast media promotion (e.g., television advertisements, radio advertisements), and electronic and computer-based promotional labeling and advertisements, such as Internet promotion, social media, emails, CD–ROMs, and DVDs.

In the **Federal Register** of March 12, 1999 (64 FR 12341), FDA announced the availability of the draft guidance of the same title, dated January 1999. FDA received six comments on the draft guidance, five were from the pharmaceutical industry and one was from a consumer. The majority of the comments related to requests to provide additional clarifications and examples related to the individual recommendations in the draft guidance. These comments were considered carefully during the finalization of the guidance document. The guidance has been revised in the following ways: (1) It clarifies certain concepts previously discussed in the draft guidance and adds definitions for certain terms; (2) it provides examples to illustrate the appropriate juxtaposition and prominence of proprietary and established names for products with one active ingredient and examples to illustrate the juxtaposition of products with two or more active ingredients; (3) it reorganizes and renames the draft guidance's sections pertaining to the frequency of the disclosure of proprietary and established names in various media into one section with three subsections—traditional print promotional labeling and advertisements, audiovisual promotional labeling and broadcast advertisements, and electronic and computer-based promotional labeling and advertisements; and (4) it discusses the use of proprietary and established names in columns in traditional print promotional labeling and advertisements.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/Drugs/GuidanceCompliance RegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceCompliance RegulatoryInformation/default.htm*, or *http://www.regulations.gov*.

Dated: January 19, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1431 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on February 28, 2012, from approximately 8 a.m. to 4 p.m. and February 29, 2012, from approximately 8 a.m. to 1 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You'', click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

For those unable to attend in person, the meeting will also be webcast. The link for the webcast is available at: *https://collaboration.fda.gov/cberac.*

Contact Person: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike Rockville, MD 20852, (301) 827–0314, or FDA Advisory Committee Information Line, 1-(800) 741–8138 (301) 443–0572 in the Washington, DC area), and follow the

prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On February 28, 2012, the committee will meet in open session to hear an overview of the research program in the Laboratory of Mycobacterial Diseases and Cellular Immunology, Division of Bacterial, Parasitic and Allergenic Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA. The committee will then discuss and make recommendations on the selection of strains to be included in the influenza virus vaccine for the 2012 to 2013 influenza season. On February 29, 2012, the committee will discuss licensure pathways for pandemic influenza vaccines.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: On February 28, 2012, between approximately 8 a.m. and 9:45 a.m. and between approximately 10:15 p.m. and 4 p.m., the meeting is open to the public. On February 29, 2012, the entire meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 21, 2012. Oral presentations from the public will be scheduled between approximately 2:40 p.m. and 3:10 p.m. on February 28, 2012, and between approximately 10:45 a.m. and 11:15 a.m. on February 29, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 13, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 14, 2012.

Closed Committee Deliberations: On February 28, 2012, between approximately 9:45 a.m. and 10:15 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: January 17, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1456 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0754]

Pediatric Medical Devices; Public Workshop; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until March 5, 2012, the comment period for the notice entitled ''Pediatric Medical Devices; Public Workshop; Request for Comments'' that appeared in the **Federal Register** of Tuesday, November 1, 2011 (76 FR 67463). In the notice, FDA announced a public workshop to consider factors affecting the use of scientific research data to support pediatric medical device efficacy claims. This is part of an on-going effort to address the ways scientific research data can be used to support pediatric effectiveness claims for medical devices and pediatric device approvals or clearance; the scientific and regulatory limitations and issues of using existing scientific research data to support pediatric effectiveness claims and pediatric indication approvals for medical devices; and methods to overcome the pitfalls and data gaps, including statistical approaches and modeling. The agency is taking this action to allow interested persons additional time to submit comments on the use of scientific research data, including published scientific literature, to support and establish pediatric indications for medical devices.

DATES: Submit either electronic or written comments by March 5, 2012.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Carol Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5437, Silver Spring, MD 20993–0002, (301) 796–3241, *Carol.Krueger@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In 2007, Congress passed the Pediatric Medical Device Safety and Improvement

Act (the Act). The Act addresses pediatric device needs by providing financial incentives for development, production, approval and distribution of new devices for rare and unmet pediatric needs; allowing for a pediatric device approval pathway that permits extrapolation of adult effectiveness data to support a pediatric indication based on similar course of the disease or condition or a similar effect of the device; and providing grants to pediatric device consortia that provide technical support and assistance to pediatric device innovators.

FDA held a public workshop on December 5, 2011, to support FDA's efforts to define pathways for approving pediatric device indications by leveraging available scientific research data. An important, but not the only, focus was a discussion of how to determine when it is appropriate to use, and how to use, existing scientific research data to determine pediatric effectiveness based on a similar course of a disease or condition or a similar effect of a device on adults and similar extrapolation between pediatric subpopulations.

The demand by health care professionals and consumers for safe and effective pediatric medical devices continues to steadily increase. Pediatric medical devices treat or diagnose diseases and conditions occurring from birth through the 21st year of life. Some devices are designed specifically for pediatric use, while others are adopted from specific adult device applications or produced for more general use.

Designing pediatric medical devices can be challenging; children are often smaller and more active than adults; body structures and functions change throughout childhood, and children may be long-term device users—bringing new concerns about device longevity and long-term exposure to implanted materials. The current medical device market for children has a higher demand than supply. FDA is committed to supporting the development and availability of safe and effective pediatric medical devices.

Regardless of attendance at the public workshop, interested persons may submit either electronic or written comments on the topics discussed at the Public Workshop.

II. Topics Discussed at the Public Workshop

The public workshop discussed the following topic areas:

1. The use of existing scientific research data to support pediatric effectiveness claims for medical devices and pediatric device approvals or clearance,
2. The scientific and regulatory limitations and issues with the use of existing scientific research data, and
3. The methods to overcome the pitfalls and data gaps, including statistical approaches and modeling.

III. Transcripts

Please be advised that a transcript of the public workshop is available at *http://www.regulations.gov* at FDA docket number FDA–2011–N–0754. The transcript may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. A transcript is also available online at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/ucm278053.htm*.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 2012.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2012–1443 Filed 1–24–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (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.

Proposed Project: The Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044)—[Extension]

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, or associate, baccalaureate, or graduate degrees in nursing.

Participating HPSL and NSL schools are responsible for determining the eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The Deferment Form (Deferment-HRSA Form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR–HRSA Form 501) provides the Federal Government with information from participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due to the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Deferment—HRSA Form 519	2,011	1	2,011	0.166	334
AOR—HRSA Form 501	907	1	907	4	3,628
Total	2,918				3,962

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: January 18, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–1496 Filed 1–24–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Collection; Comment Request: Revision of the National Diabetes Education Program Comprehensive Evaluation Plan

SUMMARY: 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 National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. This is a request for a revision to an existing approved information collection request.

Proposed Collection: Title: The National Diabetes Education Program (NDEP) Comprehensive Evaluation Plan. *Type of Information Collection Request:* Revision of a currently approved collection (#0925–0552). *Need and Use of Information Collection:* The National Diabetes Education Program is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The longterm goal of the NDEP is to reduce the burden of diabetes and pre-diabetes in the United States, and its territories, by facilitating the adoption of proven strategies to prevent or delay the onset of diabetes and its complications. The NDEP objectives are to: (1) Increase awareness and knowledge of the seriousness of diabetes, its risk factors, and effective strategies for preventing type 2 diabetes and complications associated with diabetes; (2) increase the number of people who live well with diabetes and effectively manage their disease to prevent or delay complications and improve quality of life; (3) decrease the number of Americans with undiagnosed diabetes; (4) Among people at risk for type 2 diabetes, increase the number who make and sustain effective lifestyle changes to prevent diabetes; (5) facilitate efforts to improve diabetes-related health care and education, as well as systems for delivering care (6) reduce health disparities in populations disproportionately burdened by diabetes, and (7) facilitate the incorporation of evidence-based research findings into health care practices.

Multiple strategies have been devised to address the NDEP objectives. These have been described in the NDEP Strategic Plan and include: (1) Promoting and implementing culturally and linguistically-appropriate diabetes awareness and education campaigns for a wide variety of audiences; (2) identifying, disseminating, and supporting the adoption of evidence-based, culturally and linguistically-appropriate tools and resources that support behavior change, improved quality of life, and better diabetes outcomes; (3) expanding NDEP reach and visibility through collaborations with public, private, and nontraditional partners, and use of national, state, and local media, traditional and social media, and other relevant channels.; and (4) conducting and supporting the evaluation of NDEP resources, promotions, and other activities to improve future NDEP initiatives.

The NDEP evaluation will document the extent to which the NDEP program has been implemented, and how successful it has been in meeting program objectives. The evaluation relies heavily on data gathered from existing national surveys such as National Health and Nutrition Examination Survey (NHANES), the National Health Interview Survey (NHIS), the Behavioral Risk Factor Surveillance System (BRFSS), among others for this information. This revision request is continued collection of additional primary data from NDEP target audiences on some key process and impact measures that are necessary to effectively evaluate the program. Continued approval and revision to revise and/or add questions is requested for a survey of audiences targeted by the National Diabetes Education Program including people at risk for diabetes, people with diabetes and their families, and the public.

Burden Statement: The burden for the collection of information, conducted every two to three years (2–3 years) is estimated to average 0.03 hours per response screening interview with ineligible persons and 0.25 hours per response for the eligible respondent interview.

Respondents/Affected Entities: Adult individuals.

Estimated Number of Respondents: 3759.

Frequency of Response: Once per respondent.

Estimated Total Annual Hour Burden: 575. There are no Capital Costs, Operating or Maintenance Costs to report.

Changes in the Estimates: There is no change in estimate from the last ICR renewal.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joanne Gallivan, M.S., R.D., Director, National Diabetes Education Program, NIDDK, NIH, Building 31, Room 9A06, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 494–6110 or email your request, including your address to: *Joanne_Gallivan@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: January 19, 2012.

Lisa Mascone,

Acting Executive Officer.

[FR Doc. 2012–1528 Filed 1–24–12; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

ACHP Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet Thursday, February 9, 2012. The meeting will be held at 8:30 a.m. in Room MO9 in the Old Post Office Building, 1100 Pennsylvania Ave. NW., Washington, DC 20004.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-federal members appointed by the President.

Call to Order—8:30 a.m.

I. Chairman's Welcome
II. Presentation of Chairman's Award
III. Chairman's Report
IV. ACHP Management Issues
  A. Credentials Committee Report and Recommendations
  B. Alumni Foundation Report
  C. ACHP FY 2013 Budget
  D. Meeting Venues for 2012
V. Forum Discussion-Federal Budget Austerity and Historic Preservation
VI. Historic Preservation Policy and Programs
  A. National Park Service ''Call to Action'' Implementation
  B. Legislative Agenda
  C. Rightsizing Task Force Report
  D. Sustainability Task Force Report
  E. National Trust for Historic Preservation's Life Cycle Assessment Study
VII. Section 106 Issues
  A. Section 3 Report Submission and Follow up
  B. Traditional Cultural Landscapes Forum Action Plan Implementation
  C. Bureau of Land Management Nationwide Programmatic Agreement
VIII. New Business
IX. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, Room 803, Washington, DC, (202) 606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue NW, #803, Washington, DC 20004.

Dated: January 19, 2012.

John M. Fowler,

Executive Director.

[FR Doc. 2012–1450 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1066]

Recreational Boating Safety Projects, Programs and Activities Funded Under Provisions of the Transportation Equity Act for the 21st Century; Accounting of

ACTION: Notice.

SUMMARY: In 1999, the Transportation Equity Act for the 21st Century made $5 million per year available to the Secretary of Homeland Security for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. In 2005, the law was amended, and the amount was increased to $5.5 million. The Coast Guard is publishing this notice to satisfy a requirement of the Act that a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. In this notice, we have specified the funding amounts the Coast Guard has committed, obligated, or expended during fiscal year 2011, as of September 30, 2011.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Jeff Ludwig, Regulations Development Manager, telephone (202) 372–1061.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Transportation Equity Act for the 21st Century became law on June 9, 1998 (Pub. L. 105–178; 112 Stat. 107). The Act required that of the $5 million made available to carry out the national recreational boating safety program each year, $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. On September 29, 2005, the Sportfishing and Recreational Boating Safety Amendments Act of 2005 was enacted (Pub. L. 109–74; 119 Stat. 2031). This Act increased the funds available to the national recreational boating safety program from $5 million to $5.5 million annually, and stated that ''not less than'' $2 million shall be available only to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels.

These funds are available to the Secretary from the Sport Fish Restoration and Boating Trust Fund established under section 9504(a) of title 26 U.S. Code for payment of Coast guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Subsection (c) of section 7405 of the Transportation Equity Act for the 21st Century, codified at 46 U.S.C. 13107(c), directs that no funds available to the Secretary under this subsection may be used to replace funding traditionally provided through general appropriations, nor for any purposes except those purposes authorized; namely, for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available each fiscal year from 1999 through 2011 shall

remain available during the 2 succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available, shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2011 for each activity is shown below.

Specific Accounting of Funds

National Recreational Boating Safety Survey: Funding was provided toward a national recreational boating survey that will cover a five year period. The purpose of this survey is to obtain up-to-date statistically valid estimates on recreational boating safety. During this five year period, three surveys will be conducted. During fiscal year 2011, funding was provided to conduct the first two surveys. ($6,345,764).

Factory Visit Program/Boat Testing Program: Funding was provided to continue the national recreational boat factory visit program, initiated in January 2001. The factory visit program currently allows contracted personnel, acting on behalf of the Coast Guard, to visit 1,150 recreational boat manufacturers each year to either inspect for compliance with Federal regulations, communicate with the manufacturers as to why they need to comply with Federal regulations, or educate them, as necessary, on how to comply with Federal regulations. Funding was also provided for testing of certain associated equipment and in-water testing of atypical and used recreational boats for compliance with capacity and flotation standards. Funding in the amount of $1,995.416 was provided for the Factory Visit Program/Boat Testing Program. This amount, along with approximately $100,000 of the funding provided for ''personnel support'' and approximately $140,000 of the funding provided for ''reimbursable salaries'' detailed below, satisfies the legal requirements that ''not less than'' $2 million be available to ensure compliance with Chapter 43 of Title 46, U.S. Code—Recreational Vessels. ($1,995,416).

New Recreational Boating Safety Associated Travel: Travel by members of the Boating Safety Division's strategic planning panel was undertaken to attend meetings to develop the next iteration of the national recreational boating safety program strategic plan. ($652).

Boating Accident News Clipping Services: Funding was provided to continue to gather daily news stories of recreational boating accidents nationally for more real time accident information and to identify accidents that may involve regulatory non-compliances or safety defects. ($79,119).

Web-based Document Management System: Funding was provided to continue to provide a Web-based document management system to better enable the handling of thousands of recreational boating recall case and campaign reports. ($75,000).

Recreational Boating Safety (RBS) Outreach Program: Funding was allocated for this program which provides full marketing, media, public information, and program strategy support to the nation-wide RBS effort. The goal is to coordinate the RBS outreach initiatives and campaigns, some of which include: National Boating Under the Influence Campaign (BUI), ''Boat Responsibly!'', Life Jacket Wear, Vessel Safety Check Program (VSC), Boating Safety Education Courses, Propeller Strike Avoidance, Carbon Monoxide Poisoning Awareness and Education, and other recreational boating safety issues on an as needed basis. ($940,988).

Boating Accident Report Form: Funding was provided to update the Coast Guard's Form CG–3865, which is used to report boating accidents. The form was updated to reflect a few minor changes in reporting requirements, and to ensure the electronic version of the form met all federal accessibility requirements. ($1,110).

Boating Accident Report Database (BARD) Web System: Funding was allocated to continue providing the BARD Web System, which enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to submit their accident reports electronically over a secure Internet connection. The system also enables the user community to generate statistical reports that show the frequency, nature, and severity of boating accidents. Fiscal year 2011 funds supported system maintenance, development, and technical (hotline) support. ($320,945).

Personnel Support: Funding was provided for personnel to support the development of new regulations and to conduct boating safety-related research and analysis. ($693,266).

Reimbursable Salaries: Funding was provided to carry out the work as prescribed in 46 U.S.C. 13107(c) and as described herein. The first position was that of a professional mathematician/statistician to conduct necessary national surveys and studies on recreational boating activities as well as to serve as a liaison to other Federal agencies that are conducting boating surveys so that we can pool our resources and reduce costs. The second position was that of an Outreach Coordinator with responsibilities that include overseeing and managing RBS projects related to carbon monoxide poisoning, propeller injury mitigation, and manufacturer compliance initiatives. ($296,823).

Of the $5.5 million made available to the Coast Guard in fiscal year 2011, $507,703.80 has been committed, obligated, or expended and an additional $10,241,378.91 of prior fiscal year funds have been committed, obligated, or expended, as of September 30, 2011. Approximately $5.4 million has not been committed, obligated, or expended from previous years and is being reserved for the five year national boating survey that was previously discussed in this Notice.

This notice is issued pursuant to 46 U.S.C. 13107(c)(4).

Dated: January 18, 2012.

Paul F. Thomas,

Captain, U.S. Coast Guard, Acting Director of Prevention Policy.

[FR Doc. 2012–1539 Filed 1–24–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities; Importers of Merchandise Subject to Actual Use Provisions

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60–Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Importers of Merchandise Subject to Actual Use Provisions. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 26, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at (202) 325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importers of Merchandise Subject to Actual Use Provisions.

OMB Number: 1651–0032.

Form Number: None.

Abstract: In accordance with 19 CFR 10.137, importers of goods subject to the actual use provisions of the Harmonized Tariff Schedule of the United States (HTSUS) are required to maintain detailed records to establish that these goods were actually used as contemplated by the law and to support the importer's claim for a free or reduced rate of duty. The importer shall maintain records of use or disposition for a period of 3 years from the date of liquidation of the entry, and the records shall be available at all times for examination by CBP.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 65 minutes.

Estimated Total Annual Burden Hours: 13,000.

Dated: January 19, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–1459 Filed 1–24–12; 8:45 am]

BILLING CODE ;P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–04]

Notice of Submission of Proposed Information Collection to OMB: Study of Public Housing Agencies' Engagement With Homeless Households

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is sponsoring this research effort to explore and document how public housing agencies (PHAs) currently serve and interact with homeless households. The goal of the study is to establish a baseline level of PHAs' current engagement in serving homeless households and to better understand the current opportunities provided by PHAs that either have an explicit preference for homeless households or that target assistance to homeless households in other ways.

DATES: *Comments Due Date: February 24, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528—New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.,* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Study of Public Housing Agencies' Engagement with Homeless Households.

OMB Approval Number: 2528—New.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

HUD is sponsoring this research effort to explore and document how public housing agencies (PHAs) currently serve and interact with homeless households. The goal of the study is to establish a baseline level of PHAs' current engagement in serving homeless households and to better understand the current opportunities provided by PHAs that either have an explicit preference for homeless households or that target assistance to homeless households in other ways.

Frequency of Submission: Once.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,268	1		0.333		1,089

Total Estimated Burden Hours: 1,089.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 18, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–1426 Filed 1–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–05]

Notice of Submission of Proposed Information Collection to OMB; Office of Hospital Facilities Transactional Forms for FHA Programs 242, 241, 223(f), 223(a)(7)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from OHF staff, mortgagees, mortgagors, contractors and agents to manage and monitor the application, procedure, project administration and initial/final endorsement of projects undertaken by Office of Hospital Facilities.

DATES: *Comments Due Date: February 24, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Approval Number (2502—New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Office of Hospital Facilities Transactional Forms for FHA Programs 242, 241, 223(f), 223(a)(7).

OMB Approval Number: 2502—New.

Form Numbers: 2–OHF, HUD–4128–OHF, HUD–2530, HUD–92452–OHF, HUD–92466–OHF, HUD–2576-hf-OHF, HUD–92580–OHF, HUD–3305–OHF, HUD–9250–OHF, 2205a, 2434, 92421, 92453, 92432, HUD–92415–OHF, HUD–92464–OHF, HUD–92441–OHF, 2466–GP, 41901, 92403, 92450–CA–OHF, 92422, 92451, 92452–A–OHF, HUD–92448–OHF, HUD–92457–OHF, HUD–92476.1–OHF, HUD–91725–OHF, HUD–92013–HOSP, HUD–92023–OHF, 92010, 92330A, 92403.1.

Description of the Need for the Information and its Proposed Use:

This information is collected from OHF staff, mortgagees, mortgagors, contractors and agents to manage and monitor the application, procedure, project administration and initial/final endorsement of projects undertaken by Office of Hospital Facilities.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1,105	4.036		1.319		5,883

Total Estimated Burden Hours: 5,882.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 18, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–1406 Filed 1–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–06]

Notice of Submission of Proposed Information Collection to OMB; Family Unification Program (FUP)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application for the Family Unification Program: Makes Housing Choice Vouchers available to eligible families to promote family reunification. Youths 18 to 21 who left foster care at age 16 or older are also eligible to receive assistance under the program for a maximum of 18 months. Eligible

applicants are Public Housing Agencies, who must work with a Public Child Welfare Agency to identify and assist FUP voucher recipients. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

DATES: *Comments Due Date: February 24, 2012.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0259) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at Colette. *Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice Also Lists the Following Information

Title of Proposal: Family Unification Program (FUP).

OMB Approval Number: 2577–0259.

Form Numbers: HUD 96011, SF–424, HUD–27061, HUD 2994–A, SFLLL, HUD–2990, HUD 50058, HUD 52515, HUD 2991, HUD 2880, HUD 2993.

Description of the Need for the Information and its Proposed Use: Application for the Family Unification Program: Makes Housing Choice Vouchers available to eligible families to promote family reunification. Youths 18 to 21 who left foster care at age 16 or older are also eligible to receive assistance under the program for a maximum of 18 months. Eligible applicants are Public Housing Agencies, who must work with a Public Child Welfare Agency to identify and assist FUP voucher recipients. Information collected will be used to evaluate applications and award grants through the HUD SuperNOFA process.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	265	1		23.350		6,188

Total Estimated Burden Hours: 6,188.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 18, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–1405 Filed 1–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–33]

Announcement of Funding Awards for the Assisted Living Conversion Program; Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Assisted Living Conversion Program (ALCP). This announcement contains the names of the grantees and the amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Ms. Aretha Williams, Acting Director, Office of Housing Assistance and Grant Administration, 451 7th Street SW., Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Relay Service toll-free at 1–(800) 877–8339. For general information on this and other HUD programs, visit the HUD Web site at *http://www.hud.gov.*

SUPPLEMENTARY INFORMATION: The ALCP is authorized by Section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) and the Omnibus Appropriations Act, 2010 (Pub. L. 111–117 approved December 16, 2009).

The competition was announced in the SuperNOFA published in the **Federal Register** on January 24, 2010. Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

The Catalog of Federal Domestic Assistance number for this program is 14.314.

The Assisted Living Conversion Program is designed to provide funds to private nonprofit Owners to convert their projects (that is, projects funded under Section 202, Section 8 project-based [including Rural Housing Services' Section 515], Section 221(d)(3) BMIR, Section 236, and unused and underutilized commercial properties) to assisted living facilities. Grant funds are used to convert the units and related space for the assisted living facility.

A total of $23,690,096 was awarded to 7 projects for 183 units nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix A of this document.

Dated: January 19, 2012.

Carol J. Galante,

Acting Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A

List of Awardees

Fiscal Year 2010 Assisted Living Conversion Program

Connecticut

New Haven, New Haven Jewish Federation Housing Corporation, $2,855,069.

Norwalk , King's Daughter and Sons, $2,836,302.

Indiana

Avilla, Laverna Terrace Housing, $2,251,361.

Minneapolis

Rochester, High Pointe a/k/a Rochester VOA Elderly, $2,005,760.

Saint Paul, Seabury, $1,310,020.

New York

Syracuse, Bernardine Apartments, $8,587,883.

Ohio

Johnstown, NCR of Johnstown, $3,573,701.

[FR Doc. 2012–1511 Filed 1–24–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have member terms expiring this year. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas. The BLM will accept public nominations for 45 days after the publication of this notice.

DATES: All nominations must be received no later than March 12, 2012.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** for the address of BLM State Offices accepting nominations.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, U.S. Department of the Interior, Bureau of Land Management, Correspondence, International, and Advisory Committee Office, 1849 C Street NW., MS–MIB 5070, Washington, DC 20240; (202) 208–4294.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR subpart 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of state, county, or local elected office, employees of a state agency responsible for management of natural resources, representatives of Indian tribes within or adjacent to the area for which the council is organized, representatives of academia who are employed in natural sciences, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the state in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils.

The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed background information nomination form; and

—Any other information that addresses the nominee's qualifications.

Simultaneous with this notice, BLM state offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the state. Nominations for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Thom Jennings, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (970) 271–3335.

Arizona

Arizona RAC

Dorothea Boothe, Arizona State Office, BLM, One North Central Avenue, Suite 800, Phoenix, Arizona 85004, (602) 417–9219.

California

Central California RAC

David Christy, Mother Lode Field Office, BLM, 5152 Hillsdale Circle, El Dorado Hills, California 95762, (916) 941–3146.

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332.

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332.

Colorado

Front Range RAC

Denise Adamic, Royal Gorge Field Office, BLM, 3028 East Main Street, Cañon City, Colorado 81212, (719) 269–8553.

Northwest RAC

David Boyd, Colorado River Valley Field Office, BLM, 2300 River Frontage Road, Silt, Colorado 81652, (970) 876–9008.

Southwest RAC

Shannon Borders, Southwest District Office, BLM, 2465 South Townsend Avenue, Montrose, Colorado 81401, (970) 240–5399.

Idaho

Boise District RAC

MJ Byrne, Boise District Office, BLM, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3393.

Coeur d'Alene District RAC

Suzanne Endsley, Coeur d'Alene District Office, BLM, 3815 Schreiber

Way, Coeur d'Alene, Idaho 83815, (208) 769–5004.

Idaho Falls District RAC

Sarah Wheeler, Idaho Falls District Office, BLM, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7613.

Twin Falls District RAC

Heather Tiel-Nelson, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

Montana and Dakotas

Central Montana RAC

Craig Flentie, Lewistown Field Office, BLM, 920 Northeast Main Street, Lewistown, Montana 59457, (406) 538–1943.

Dakotas RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, (406) 233–2800.

Eastern Montana RAC

Mark Jacobsen, Miles City Field Office, BLM, 111 Garryowen Road, Miles City, Montana 59301, (406) 233–2800.

Western Montana RAC

David Abrams, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701, (406) 533–7617.

Nevada

Mojave-Southern Great Basin RAC; Northeastern Great Basin RAC; Sierra Front Northwestern Great Basin RAC

Rochelle Francisco, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502, (775) 861–6588.

New Mexico

Albuquerque District RAC

Gina Melchor, Albuquerque District Office, BLM, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8935.

Farmington District RAC

Bill Papich, Farmington District Office, BLM, 6251 College Boulevard, Farmington, New Mexico 87402, (505) 564–7600.

Las Cruces District RAC

Rena Gutierrez, Las Cruces District Office, BLM, 1800 Marquess St., Las Cruces, New Mexico 88005, (575) 525–4338.

Pecos District RAC

Betty Hicks, Pecos District Office, BLM, 2909 West Second Street, Roswell, New Mexico 88201, (575) 627–0242.

Oregon/Washington

Eastern Washington RAC; John Day-Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, Oregon 97204, (503) 808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, Utah 84101, (801) 539–4195.

Certification Statement: I hereby certify that the BLM Resource Advisory Councils are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: January 20, 2012.

Mike Pool,

Deputy Director.

[FR Doc. 2012–1460 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY922000–L13200000–EL0000; WYW176095]

Notice of Competitive Coal Lease Sale, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that certain coal resources in the South Porcupine Coal Tract described below in Campbell County, Wyoming, will be offered for competitive lease by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended.

DATES: The lease sale will be held at 10 a.m. on Wednesday, February 29, 2012. Sealed bids must be submitted on or before 4 p.m. on Tuesday, February 28, 2012.

ADDRESSES: The lease sale will be held in the First Floor Conference Room (Room 107), of the Bureau of Land Management (BLM) Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003. Sealed bids must be submitted to the Cashier, BLM Wyoming State Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: Mavis Love, Land Law Examiner, or Kathy Muller Ogle, Coal Coordinator, at (307) 775–6258, and (307) 775–6206, respectively.

SUPPLEMENTARY INFORMATION: This coal lease sale is being held in response to a lease by application (LBA) filed by BTU Western Resources, Inc., Gillette, Wyoming. The coal resource to be offered consists of all reserves recoverable by surface mining methods in the following-described lands located approximately 1 to 4 miles north of the Campbell/Converse county line, adjacent and up to 2 miles east of the main line railroad, and adjacent to the western and northern lease boundary of the North Antelope Rochelle Mine.

T. 41 N., R. 70 W., 6th Principal Meridian
Sec. 7, lots 7 through 10 inclusive and lots 15 through 18 inclusive;
Sec. 18, lots 6 through 11 inclusive and lots 14 through 19 inclusive;

T. 41 N., R. 71 W., 6th Principal Meridian
Sec. 1, lots 5 through 20 inclusive;
Sec. 12, lots 1 through 16 inclusive;
Sec. 13, lots 1 through 16 inclusive;
Sec. 14, lots 1, 2, 8, 9, 16, and 18;
Sec. 23, lots 1 and 17; and
Sec. 24, lots 2 through 4 inclusive and lots 17, 19, and 21.

Containing 3,243.03 acres, more or less, in Campbell County, Wyoming.

The LBA tract is adjacent to Federal leases to the east and south as well as a State of Wyoming lease to the north, all controlled by the North Antelope Rochelle Mine. It is also adjacent to Federal leases to the west across the mainline railroad, which is part of Cloud Peak Energy Resources, LLC's Antelope Mine. It is adjacent to additional unleased Federal coal to the west.

Most of the acreage offered has been determined to be suitable for mining except for the mainline railroad right-of-way along the western boundary of the LBA. Features such as roads, utilities, and pipelines can be moved to permit coal recovery. In addition, a producing gas well is located on the LBA as well as several coal bed natural gas wells. The estimate of the bonus value of the coal lease will include consideration of the future production from these wells. An economic analysis of this future income stream will consider reasonable compensation to the gas lessee for lost production of the natural gas when the wells are bought out by the coal lessee. Approximately half of the surface estate of the tract is within the Thunder Basin National Grasslands and managed by the U.S. Forest Service. Most of the

other half of the surface estate is owned by various private entities with a small amount owned by a Peabody Energy Corporation subsidiary.

The tract contains surface mineable coal reserves in the Wyodak-Anderson coal zone currently being recovered in the adjacent, existing mines. On the LBA tract, there are two mineable seams, the Wyodak-Anderson 1 (Anderson) and the Wyodak-Anderson 2 (Canyon), located in the southern portion of the LBA that merge into a single seam in the northern portion. The total coal thickness averages about 77 feet with the shallower Anderson seam slightly thicker than the deeper Canyon seam where two seams occur. The two seams can be separated by as much as 80 feet of interburden. Overburden depths to the Anderson range from about 160 to 460 feet thick.

The tract contains an estimated 401,830,508 tons of mineable coal. This estimate of mineable reserves includes the two seams mentioned above but does not include any tonnage from localized seams or splits containing less than 5 feet of coal. It does not include the adjacent State of Wyoming coal although these reserves are expected to be recovered in conjunction with the LBA tract. It also excludes coal within and along the railroad right of way as required by typical mining practices. The total mineable stripping ratio of the coal in bank cubic yards per ton is approximately 4.8:1. Potential bidders for the LBA tract should consider the recovery rate expected from thick and multiple seam mining.

The South Porcupine LBA coal is ranked as subbituminous C. The overall average quality on an as-received basis is 8,905 British Thermal Units per pound containing about 0.20 percent sulfur. These quality averages place the coal reserves near the high end of the range of coal quality currently being mined in the Wyoming portion of the Powder River Basin.

The tract in this lease offering contains split estate lands. There are qualified surface owners as defined in the regulations at 43 CFR 3400.0–5(gg). Consent granted by the qualified surface owners has been filed with and verified by the BLM. The LBA tract lands included in the consent are:

T. 41 N., R. 71 W., 6th Principal Meridian
Sec. 13, lots 12 through 14 inclusive;
Sec. 14, lots 1, 2, 8, and 18; and
Sec. 24, lots 3, 4, 17, 19, and 21.

Containing 396.79 acres, more or less, in Campbell County, Wyoming.

The purchase price of the consent as stated in the consent documents is ''* * * an overriding royalty of three percent (3%) of the gross realization of all coal mined and sold from the Subject Property.''

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets or exceeds the BLM's estimate of the fair market value (FMV) of the tract. The minimum bid for the tract is $100 per acre or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The bids should be sent by certified mail, return receipt requested, or be hand delivered. The BLM Wyoming State Office Cashier will issue a receipt for each hand-delivered bid. Bids received after 4 p.m. local time on Tuesday, February 28, 2012, will not be considered. The minimum bid is not intended to represent FMV. The FMV of the tract will be determined by the Authorized Officer after the sale. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payment to the United States of 12.5 percent of the value of coal produced by surface mining methods. The value of the coal will be determined in accordance with 30 CFR 1206.250.

Pursuant to the regulation at 43 CFR 3473.2(f), the applicant for the South Porcupine Tract, BTU Western Resources, Inc., has paid a total case-by-case cost recovery processing fee in the amount of $83,694. The successful bidder for the South Porcupine Tract, if someone other than the applicant, must pay to the BLM the $83,694 previously paid by BTU Western Resources, Inc. Additionally, the successful bidder must pay all processing costs the BLM will incur after the date this sale notice is published in the **Federal Register**, which are estimated to be $10,000.

Bidding instructions for the LBA tract offered and the terms and conditions of the proposed coal lease are available from the BLM Wyoming State Office at the address above. Case file documents, WYW176095, are available for inspection at the BLM Wyoming State Office.

Donald A. Simpson,

State Director.

[FR Doc. 2012–1296 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLID9570000.LL14200000.BJ0000]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of portions of the Fourth Standard Parallel North (south boundary), east boundary, subdivisional lines, and 1894 left bank meanders of the North Fork of the Payette River in section 36, and the subdivision of section 36, the survey of the 2006–2009 left bank meanders of the North Fork of the Payette River in section 36, and the survey of a 2006–2009 partition line in section 36, Township 18 North, Range 2 East, Boise Meridian, Idaho, Group Number 1238, was accepted December 7, 2011.

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, a portion of the subdivision of section 18, the original 1891 left bank meanders of the Salmon River in sections 7 and 18 and the original 1891 right bank meanders of the Salmon River in section 7, Township 23 North, Range 22 East, of the Boise Meridian, Idaho, Group Number 1325, was accepted December 14, 2011.

This survey was executed at the request of the Bureau of Indian Affairs to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the east boundary, and the subdivisional lines, and the subdivision of section 36, Township 36 North, Range 1 East, of the Boise Meridian, Idaho, Group Number 1319, was accepted November 3, 2011.

This survey was executed at the request of the U. S. Fish and Wildlife Service to meet certain administrative and management purposes.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, and the original meanders of North Lake, and the partial subdivision of section 7, and the metes-and-bounds survey of Lot 19, section 7, Township 14 South, Range 44 East, of the Boise Meridian, Idaho, Group Number 1357, was accepted November 4, 2011.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the U.S. Forest Service to meet certain administrative and management purposes. The plat constituting the dependent resurvey of a portion of the south boundary and the survey of a portion of the subdivisional lines, Township 8 North, Range 13 East, of the Boise Meridian, Idaho, Group Number 1326, was accepted August 31, 2011.

Dated: January 13, 2012.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 2012–1452 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957400–12–L14200000–BJ0000]

Filing of Plats of Survey, Wyoming and Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed the plats of survey of the lands described below in the BLM Wyoming State Office, Cheyenne, Wyoming, on the dates indicated.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management and the U.S. Forest Service, and are necessary for the management of resources. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the west boundary and subdivisional lines, and the survey of the subdivision of section 18, Township 22 North, Range 81 West, Sixth Principal Meridian, Wyoming, Group No. 842, was accepted September 29, 2011.

The plat and field notes representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and the subdivision of sections 4 and 10, Township 57 North, Range 101 West, Sixth Principal Meridian, Wyoming, Group No. 816, was accepted October 4, 2011.

The supplemental plat showing amended lottings, Township 41 North, Range 71 West, Sixth Principal Meridian, Wyoming, Group No. 852, was accepted October 12, 2011 and based upon the dependent resurvey plat of Township 41 North, Range 71 West, accepted April 8, 1981 and supplemental plat of Township 41 North, Range 71 West, accepted December 4, 1985.

The plat representing the entire record of the corrective dependent resurvey of a portion of the subdivisional lines designed to restore the corners in their true original locations according to the best available evidence, Township 17 North, Range 93 West, Sixth Principal Meridian, Wyoming, Group No. 822, was accepted October 13, 2011.

The plat and field notes representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, and the subdivision of section 32, Township 20 North, Range 75 West, Sixth Principal Meridian, Wyoming, Group No. 828, was accepted October 13, 2011.

The supplemental plat representing the segregation of Tract 46A from Tracts 46 and 47, Township 41 North, Range 117 West, Sixth Principal Meridian, Wyoming, Group No. 814, was accepted November 3, 2011.

The supplemental plat representing the segregation of Tract 46B from Tract 46, Township 41 North, Range 117 West, Sixth Principal Meridian, Wyoming, Group No. 814, was accepted November 3, 2011.

The plat and field notes representing the dependent resurvey of portions of the east boundary, a portion of the west boundary, and portions of the north boundary and subdivisional lines, Township 31 North, Range 107 West, Sixth Principal Meridian, Wyoming, Group No. 821, was accepted November 3, 2011.

The plat and field notes representing the dependent resurvey of a portion of the north and west boundaries, a portion of the subdivisional lines, and a portion of the adjusted meanders of the shoreline of Cooper Lake, Township 19 North, Range 75 West, Sixth Principal Meridian, Wyoming, Group No. 828, was accepted November 3, 2011.

The field notes representing the remonumentation of the ¼ sec. cor. of secs. 31 and 32, Township 44 North, Range 76 West, Sixth Principal Meridian, Wyoming, Group No. 850, was accepted November 3, 2011.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 33, Township 26 North, Range 105 West, Sixth Principal Meridian, Wyoming, Group No. 823, was accepted November 3, 2011.

The plat and field notes representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines, the subdivision of section 18, and the metes and bounds survey of Lots 5 and 6, section 18, Township 34 North, Range 54 West, Sixth Principal Meridian, Nebraska, Group No. 174, was accepted November 30, 2011.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 13, and the metes and bounds survey of Lot 1, section 13, Township 34 North, Range 55 West, Sixth Principal Meridian, Nebraska, Group No. 174, was accepted November 30, 2011.

The field notes representing the remonumentation of the ¼ sec. cor. of secs. 15 and 16, and the ¼ sec. cor. of secs. 16 and 21, Township 13 North, Range 83 West, Sixth Principal Meridian, Wyoming, Group No. 624, was accepted November 30, 2011.

The plat and field notes representing the retracement and dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 34, Township 34 North, Range 110 West, Sixth Principal Meridian, Wyoming, Group No. 827, was accepted November 30, 2011.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 32, Township 23 North, Range 71 West, Sixth Principal Meridian, Wyoming, Group No. 831, was accepted November 30, 2011.

Copies of the preceding described plats and field notes are available to the public at a cost of $1.10 per page.

Dated: January 19, 2012.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2012–1453 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of February 4, 2012, meeting.

SUMMARY: This notice sets forth the date of the February 4, 2012, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, February 4, 2012, from 10 a.m. to 1 p.m. (Eastern).

Location: The meeting will be held via teleconference at the Flight 93 National Memorial office, 109 West Main Street Suite 104, Somerset, PA 15501.

Agenda: The February 4, 2012, meeting will consist of:

1. Opening of Meeting and Pledge of Allegiance.
2. Review and Approval of Commission Minutes from November 5, 2011.
3. Reports.
4. Old Business.
5. New Business.
6. Public Comments.
7. Closing Remarks.

FOR FURTHER INFORMATION CONTACT: Jeffrey P. Reinbold, Superintendent, Flight 93 National Memorial, P.O. Box 911, Shanksville, PA 15560, 814.893.6322.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. Address all statements to: Flight 93 Advisory Commission, P.O. Box 911, Shanksville, PA 15560. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 10, 2012.

Jeffrey P. Reinbold,

Superintendent, Flight 93 National Memorial.

[FR Doc. 2012–1505 Filed 1–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0025

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information regarding the maintenance of State programs, and procedures for substituting Federal enforcement of State programs and withdrawing approval of State programs.

DATES: Comments on the proposed information collection activity must be received by March 26, 2012, to be assured of consideration.

ADDRESSES: Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease, at (202) 208–2783 or via email at *jtrelease@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR Part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs. OSM will request a 3-year term of approval for each information collection activity. Responses are required to obtain a benefit.

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.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR part 733—Maintenance of State Programs and Procedures for Substituting Federal Enforcement of State Programs and Withdrawing Approval of State Programs.

OMB Control Number: 1029–0025.

Summary: This Part allows any interested person to request the Director of OSM evaluate a State program by setting forth in the request a concise statement of facts that the person believes establishes the need for the evaluation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Any interested person (individuals, businesses, institutions, organizations).

Total Annual Responses: 1.

Total Annual Burden Hours: 50.

Dated: January 19, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2012–1541 Filed 1–24–12; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigations No. 337–TA–741 and 337–TA–749]

Certain Liquid Crystal Display Devices, Including Monitors, Televisions, and Modules, and Components Thereof; Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge

(ALJ) has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding (ID/RD) in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order directed to any respondent that the Commission finds in violation of section 337, and a cease and desist order to any respondent found to have a commercially significant infringing inventory.

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 ALJ's ID/RD will be accessible 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: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on January 12, 2012 (confidential version). Comments should address whether issuance of a limited exclusion order and cease and desist orders in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how any limited exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on February 16, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–739'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

By order of the Commission.
Issued: January 20, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1532 Filed 1–24–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–750]

Certain Mobile Devices and Related Software; Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the presiding administrative law judge has issued a Final Initial Determination and Recommended Determination on Remedy and Bonding in the above-captioned investigation. The Commission is soliciting comments on public interest issues raised by the recommended relief, specifically a limited exclusion order directed to the products of Motorola Solutions that have been found to infringe the asserted patents and a cease and desist order directed to Motorola Solutions.

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: Section 337 of the Tariff Act of 1930 provides that if the Commission finds a violation it shall exclude the articles concerned from the United States:

> unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is interested in further development of the record on the public interest in these investigations. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the administrative law judge's Recommended Determination on Remedy and Bonding issued in this investigation on January 13, 2012. Comments should address whether issuance of a limited exclusion order and a cease and desist order in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the recommended exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the limited exclusion order and cease and desist order would impact consumers in the United States.

Written submissions must be filed no later than by close of business on February 22, 2012.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–750'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50).

Issued: January 20, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1533 Filed 1–24–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0040]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Application for an Amended Federal Firearms License

ACTION: 60-Day Notice of Information Collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until March 26, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, Acting Chief, Federal Firearms Licensing Center, *tracey.robertson@atf.gov* (304) 616–4647, 244 Needy Road, Martinsburg, WV 25405.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Summary of Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for an Amended Federal Firearms License.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.38. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: Business or other for-profit. Other: Individual or households.

Need for Collection

The form is primarily used when a Federal firearms licensee makes application to change the location of the business premises. The form is also used for changes of trade or business name, changes of mailing address, changes of contact information, changes of hours of operation/availability, and allows for licensees to indicate any changes of business structure.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 18,000 respondents will complete a 30 minute form once annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 9,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–1376 Filed 1–24–12; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Mladen Antolic, M.D.; Decision and Order

On August 8, 2011, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Mladen Antolic, M.D. (Registrant), of Orlando, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration BA1325528, as a practitioner in Schedules II through V, on the ground that he does ''not have authority to practice medicine or handle controlled substances in the state of Florida.'' Show Cause Order at 1 (citing 21 U.S.C. 824(a)(3)).

The Show Cause Order alleged that ''on or about March 29, 2011, the Florida Department of Health [had] ordered the emergency suspension of [Registrant's] medical license,'' and that he is thus ''without authority to handle controlled substances in the State of Florida, the state in which [he is] registered with DEA.'' *Id.* The Show Cause Order alleged that the state suspension was based on allegations that Registrant had engaged ''in sexual activity with patient(s),'' that he ''[i]nappropriately dispens[ed], administer[ed] or otherwise provid[ed] controlled substances to individuals in [his] home as payment for sex or for recreational use,'' and that he had ''[a]dminister[ed] controlled substances to [him]self when such controlled substances were not prescribed to [him] by a practitioner authorized to prescribe, dispense or administer medicinal drugs.'' *Id.* at 1–2 (citing Fla. Sta. § 458.331(1)(j), (q), (r)). In addition to the allegations, the Order notified Registrant of his right to request a hearing on the allegations or to submit a written statement in lieu of a hearing, the procedure for doing either, and the consequence for failing to do either. *Id.* at 2 (citing 21 CFR 1301.43).

On August 12, 2011, DEA Diversion Investigators personally served the Show Cause Order on Registrant, in the presence of his attorney. GX 3 (Affidavit of DI). Since the date of service of the Order, thirty days have now have passed and neither Registrant, nor anyone purporting to represent him, has requested a hearing or submitted a written statement in lieu of a hearing. I therefore find that Registrant has waived his right to a hearing or to submit a written statement in lieu of a hearing and issue this Decision and Final Order based on relevant evidence contained in the record submitted by the Government. 21 CFR 1301.43(d) & (e). I make the following findings of fact.

Findings

Registrant is the holder of DEA Certificate of Registration BA1325528, which authorizes him to dispense controlled substances in Schedules II through V, as a practitioner, at the registered address of 509 W. Colonial Drive, Orlando, Florida 32804. GX 1. His registration has an expiration date of June 30, 2012. *Id.*

On March 29, 2011, the Acting State Surgeon General of the Florida Department of Health (DOH) issued to Registrant an Order of Emergency Suspension of License (hereinafter, DOH Order). GX 4, at 11. The State Surgeon General suspended Registrant's license based on findings that he violated Florida Statutes sections 458.331(1)(j) (exercising influence within a patient-physician relationship for purposes of engaging a patient in sexual activity), 458.331(1)(q) (inappropriately dispensing, administering or otherwise providing oxycodone, cocaine or Xanax to people at his home), and 458.331(1)(r) (engaging in prescribing, dispensing or administering any medicinal drug appearing on any schedule * * * to himself * * * except one prescribed * * * by another practitioner authorized to prescribe, dispense or administer medicinal drugs.). DOH Order, at 8–9.

Registrant did not dispute or respond to the State's allegations. GX 5, at 1 (Final Order, at 2, *Department of Health* v. *Mladen Antolic, M.D.,* DOH Case No. 2010–20687 (Fla. Bd. of Med. Oct. 6, 2010)). Accordingly, on October 6, 2011, the Florida Board of Medicine issued a final order revoking Registrant's state medical license. *Id.* at 2. I therefore find that Registrant currently lacks authority under Florida law to dispense controlled substances.

Discussion

The Controlled Substances Act (CSA) grants the Attorney General authority to revoke a registration ''upon a finding that the registrant * * * has had his State license or registration suspended [or] revoked * * * and is no longer authorized by State law to engage in the * * * distribution [or] dispensing of controlled substances.'' 21 U.S.C. 824(a)(3). Moreover, DEA has long held that a practitioner must be currently authorized to handle controlled substances in the jurisdiction in which he practices in order to maintain a DEA registration. *See Gerald T. Hanley,* 53 FR 5658 (1988). This rule derives from the text of the CSA, which defines ''the term 'practitioner' [to] mean[] a * * * physician * * * or other person licensed, registered or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice,'' 21 U.S.C. 802(21), and which imposes, as a condition for obtaining a registration, that a practitioner be authorized to dispense controlled substances under the laws of the State in which he practices. *See id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.'').

As these provisions make plain, possessing authority under state law to dispense controlled substances is an essential condition for holding a DEA registration. *See David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci,* 58 FR 51104, 51105 (1993); *Bobby Watts,* 53 FR 11919, 11920 (1988). Therefore, because

Registrant no longer has authority to dispense controlled substances in the State in which he holds his DEA registration and formerly engaged in professional practice, he is not entitled to maintain his DEA registration. *See* 21 U.S.C. 802(21), 823(f), and 824(a)(3). Accordingly, Registrant's registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration BA1325528, issued to Mladen Antolic, M.D., be, and it hereby is, revoked. I further order that any pending application of Mladen Antolic, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: December 23, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1492 Filed 1–24–12; 8:45 am]

BILLING CODE 4410–09–P

[1] For the same reasons that the State imposed its emergency suspension of Respondent's medical license, I conclude that the public interest requires that this Order be effective immediately. 21 CFR 1316.66.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph Deluca, D.O.; Dismissal of Proceeding

On July 16, 2010, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Joseph Deluca, D.O. (Registrant), of Coral Springs, Florida. The Show Cause Order proposed the revocation of Registrant's DEA Certificate of Registration as a practitioner and the denial of any pending applications to renew or modify his registration, on the ground that ''[a]s a result of action by the Florida Department of Health, Board of Osteopathic Medicine, [he is] without authority to handle controlled substances in the State of Florida, the [S]tate in which [he is] registered with DEA.'' Show Cause Order at 1.

On July 27, 2010, the Government attempted to serve the Order to Show Cause on Registrant by certified mail, return receipt requested, which was addressed to him at his registered location. However, on August 9, 2010, the mailing was returned to DEA and stamped with the notations: ''MOVED, LEFT NO ADDRESS'' and ''RETURNED TO SENDER.'' GX 4.

On December 30, 2010, the Government submitted the investigative record and a Request for Final Agency Action to this Office. Therein, the Government stated that: ''[t]he Order to Show Cause was delivered via certified mail to the registered location of the Registrant, but was returned unclaimed. The Government has no information on a forwarding address for the Registrant or of his whereabouts.'' Request for Final Agency Action, at 1.

In its Request, the Government noted that on November 12, 2008, the Florida Department of Health, Board of Osteopathic Medicine (Board), issued an administrative complaint to Registrant. *Id.* The Government further noted that on March 23, 2010, the Board issued a final order (a copy of which was submitted in the Investigative Record) suspending Registrant's medical license for a period of two years. *Id.* at 1–2.

In its discussion of the procedural history of the Board proceeding, the Board's Final Order stated that ''[o]n October 12, 2009, the Petitioner [Florida Department of Health] received a request from the Respondent for a Hearing Not Involving Disputes Issues of Material Fact or Informal Hearing.'' GX 6, at 1. The Board's Final Order then noted that the ''Petitioner has filed a Motion for Final Order by Hearing Not Involving Disputes Issues of Material Facts,'' and that ''Respondent filed a response to the Motion for Final Order.'' *Id.* The Final Order also included a Certificate of Service, which noted that a copy of the order had been mailed to Respondent at an address in Pembroke Pines, Florida. *Id.* at 8.

Discussion

It is well settled ''that due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones* v. *Flowers,* 547 U.S. 220, 223 (2006) (quoting *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950)). Moreover, '' 'when notice is a person's due * * * [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.' '' *Jones,* 547 U.S. at 229 (quoting *Mullane,* 339 U.S. at 315).

In *Jones,* the Court further noted that its cases ''require[] the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case.'' *Id.* at 230. The Court cited with approval its decision in *Robinson* v. *Hanrahan,* 409 U.S. 38 (1972), where it ''held that notice of forfeiture proceedings sent to a vehicle owner's home address was inadequate when the State knew that the property owner was in prison.'' *Jones,* 547 U.S. at 230.[1] *See also Robinson,* 409 U.S. at 40 (''[T]he State knew that appellant was not at the address to which the notice was mailed * * * since he was at that very time confined in * * * jail. Under these circumstances, it cannot be said that the State made any effort to provide notice which was 'reasonably calculated' to apprise appellant of the pendency of the * * * proceedings.''); *Covey* v. *Town of Somers,* 351 U.S. 141 (1956) (holding that notice by mailing, publication, and posting was inadequate when officials knew that recipient was incompetent).

The *Jones* Court further explained that ''under *Robinson and Covey,* the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice.'' 547 U.S. at 230. The Court also noted that ''a party's ability to take steps to safeguard its own interests [such as by updating his address] does not relieve the State of its constitutional obligation.'' *Id.* at 232 (quoting Brief for United States as *Amicus Curiae* 16 n.5 (quoting *Mennonite Bd. of Missions* v. *Adams,* 462 U.S. 791, 799 (1983))). However, the Government is not required to undertake ''heroic efforts'' to find a registrant. *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002).

Here, it is clear that '' '[t]he means employed' '' by the Government were not '' 'such as one desirous of actually informing the [registrant] might reasonably adopt to accomplish it.' '' *Jones,* 547 U.S. at 229 (quoting *Mullane,* 339 U.S. at 315). While in its Request for Final Agency Action, the Government asserts that it ''has no information on a forwarding address for the Registrant or of his whereabouts,'' the very state board order it relies upon as the basis

[1] The CSA states that ''[b]efore taking action pursuant to [21 U.S.C. 824(a)] * * * the Attorney General shall serve upon the * * * registrant an order to show cause why registration should not be * * * revoked[] or suspended.'' 21 U.S.C. 824(c). In contrast to the schemes challenged in *Jones* and *Robinson,* which provided for service to the property owner's address as listed in state records, neither the CSA nor Agency regulations state that service shall be made at any particular address such as the registered location. In any event, while in most cases, service to a registrant's registered location provides adequate notice, the Supreme Court's clear instruction is that the Government cannot ignore ''unique information about an intended recipient'' when its seeks to serve that person with notice of a proceeding that it is initiating. *Jones,* 547 U.S. at 230.

for this proceeding indicates that the Registrant filed pleadings in that matter and provided an address at which the State served him with its final order. Yet the Government made no attempt to serve the Order to Show Cause on him at that address.

Because the Government clearly has information available to it regarding the whereabouts of Registrant and yet made no attempt to serve him at that address, I conclude that it has not complied with its obligation under the Due Process Clause ''to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' '' *Jones,* 547 U.S. at 223 (quoting *Mullane,* 339 U.S. at 314). Accordingly, the Government's request for a final order revoking Registrant's registration is denied and the Order to Show Cause is dismissed without prejudice.

It is so ordered.

Dated: December 23, 2011.

Michele M. Leonhart,

Administrator.

[FR Doc. 2012–1491 Filed 1–24–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0002]

Asbestos in Construction 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's approval of the information collection requirements contained in the Asbestos in Construction Standard (29 CFR 1926.1101). The standard protects workers from adverse health effects from occupational exposure to asbestos, including lung cancer, mesothelioma, asbestosis (an emphysema-like condition) and gastrointestinal cancer.

DATES: Comments must be submitted (postmarked, sent, or received) by March 26, 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 a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2012–0002, 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–2012–0002) 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 may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, 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 efforts 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 protects workers from adverse health effects from occupational exposure to asbestos, including lung cancer, mesothelioma, asbestosis (an emphysema-like condition) and gastrointestinal cancer.

The standard requires employers to train workers about hazards to asbestos, to monitor worker exposure, to provide medical surveillance, and maintain accurate records of worker exposure to asbestos. These records will be used by employers, workers and the Government to ensure that workers are not harmed by exposure to asbestos in the workplace.

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 requesting that OMB extend its approval of the information

collection requirements contained in the Asbestos in Construction Standard (29 CFR 1926.1101). The Agency is requesting a burden hour adjustment from 4,957,804 to 4,929,794 hours, an adjustment decrease of 28,010 hours. Based upon review of data, the number of employers affected by the Standard decreased from 1.27 to 1.24 million.

The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Asbestos in Construction Standard (29 CFR 1926.1101).

OMB Control Number: 1218–0134.

Affected Public: Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 249,534.

Frequency of Response: On occasion.

Responses: 48,469,358

Average Time per Response: Time per response ranges from 5 minutes (.08 hour) to maintain records to 1.67 hours to complete a medical examination.

Estimated Total Burden Hours: 4,929,794 hours.

Estimated Cost (Operation and Maintenance): $28,816,390.

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 the ICR (Docket No. OSHA–2012–0002). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or 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 the 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 January 20, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–1547 Filed 1–24–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978, Public Law 95–541. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 24, 2012. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L.95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:*

Charles D. Amsler, Jr., Department of Biology, University of Alabama, Birmingham, AL 35294–1170.

Permit Application: 2012–012.

Activity for Which Permit Is Requested

Take and Import into the U.S.A. The applicant plans to take from the Palmer Station area approximately 20 brown marine algae, 30 green marine algae, 10 red marine algae, and 10 diatom marine algae to sublimate cultures of filamentous Antarctic macroalgae and diatoms previously isolated in culture but require additional strains, particularly of filamentous green algal endophytes for future study. The applicant will use these samples to understand the interactions of epiphytic and endophytic algae (both filamentous macroalgae and diatoms) with larger macroalgae and with mesoherbivores such as amphipods. The cultures will be maintained at the home university.

Location: Palmer Station, Anvers Island, Antarctic Peninsula.

Dates: April 1, 2012 to July 31, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2012–1509 Filed 1–24–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0017]

Accurate NDE & Inspection, LLC; Confirmatory Order

In the Matter of Accurate NDE & Inspection, LLC Broussard, Louisiana.	Docket: 150–00017, General License Pursuant to 10 CFR 150.20, EA–11–043

(Effective Immediately)

I

Accurate NDE & Inspection, LLC, (Accurate NDE or Licensee) is the holder of a general license issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR 150.20. This general license was granted to Accurate NDE at various times during calendar years between 2005 and 2011.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 28, 2011, in Baton Rouge, Louisiana.

II

On May 26, 2010, the NRC conducted a special inspection of licensed activities involving the use of byproduct material for industrial radiography conducted under a general license pursuant to the provisions of 10 CFR 150.20. The inspection was conducted in response to an event that occurred on March 15, 2010, involving the loss of a sealed source of iridium-192 while performing licensed activities in offshore Federal waters. On June 28, 2010, the NRC's Office of Investigations, Region IV, began an investigation (Case 4–2010–062) to determine if Accurate NDE, a State of Louisiana licensee, willfully failed to follow Louisiana license and NRC regulatory requirements. By letter dated July 28, 2011, the NRC transmitted the results of the inspection and investigation in NRC Inspection Report 150–00017/2010–002 and Investigation Report 4–2010–062 (ML11209B523) to Accurate NDE. Based on the results of the NRC inspection and investigation, the NRC determined that five apparent violations of NRC requirements had occurred. The apparent violations involved failures to: (1) Comply with the terms of an Agreement State license that requires the licensee to follow its operating procedures, which prohibit radiographers from attempting to retrieve a disconnected source without notifying the radiation safety officer (RSO); (2) maintain accurate information concerning personnel monitoring; (3) wear personnel dosimeters at all times while performing radiographic operations; (4) conduct a radiation survey when a radiographic exposure device is placed into storage; and (5) immediately report the loss of a sealed source of radiation. In addition, the NRC is concerned that willfulness may be associated with the apparent failure to follow the operating procedure that prohibits a radiographer from attempting to retrieve a disconnected radiography source without notifying the RSO, and the apparent failure to maintain accurate personnel monitoring information.

In the July 28 letter, the NRC informed Accurate NDE that the NRC was considering escalated enforcement action for the apparent violations. The NRC offered Accurate NDE the opportunity to request a predecisional enforcement conference or request ADR with the NRC in an attempt to resolve issues associated with this matter. In response, on August 9, 2011, Accurate NDE requested ADR to resolve this matter with the NRC.

On September 28, 2011, the NRC and Accurate NDE representatives met in an ADR session with a professional mediator, arranged through the Cornell University Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

In response to the NRC's offer, Accurate NDE requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

The NRC recognizes the corrective actions that Accurate NDE has already implemented associated with the apparent violations, which include:

- Short-term corrective actions that included training provided to the radiography staff by the RSO on operating procedures specific to source disconnect events.
- Posting on the offshore platform that included a warning plaque, stating that a radioactive source was lost below the platform.
- Provided training to radiography staff during the annual refresher training conducted in October 2010 and the safety meeting conducted in June 2011.

Accurate NDE has also agreed to take the following corrective actions to address the apparent violations:

A. Accurate NDE will establish a comprehensive training program with the goal of deterring future willful violations by ensuring that its employees understand the importance that the NRC places on violations that are caused by deliberate misconduct, as well as violations caused by careless disregard. Therefore, in addition to discussing deliberate misconduct and careless disregard, the training will also stress the importance of knowing the procedural and regulatory requirements that apply to the work activities and knowing when to stop and verify what the correct action to take is before proceeding in the work activity. The training program will consist of training for all the current and newly hired employees performing NRC-licensed activities and provide for annual refresher training. Accurate NDE will complete the following activities for the training program:

1. *Initial Training Requirements for Current Employees:*

- Within 60 days of the issuance date of this Confirmatory Order, Accurate NDE will contract with an external contractor to provide training to all of its current employees who are engaged in NRC-licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct.
- At least 15 days prior to the date that Accurate NDE intends to execute a contract with the external contractor, Accurate NDE will submit, for NRC review and approval, the resume of the contractor recommended to perform the training.
- At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, Accurate NDE will submit, for NRC review and approval, an outline of the topics to be covered during this training session.
- The initial training must be completed for all current employees, within 45 days of NRC's approval of the outline of course topics.
- Accurate NDE will assess the effectiveness of the training through written testing. Any employee not passing the test will receive remedial training and will be re-tested. Within 30 days of completing the initial training for all current employees, Accurate NDE will provide to the NRC (1) a letter stating that the training, as specified

above, has been completed and (2) the results of the employee testing process.

2. *Initial Training for New Employees and Annual Refresher Training:*

• Within 120 days of the issuance date of this Confirmatory Order, Accurate NDE will submit for NRC review and approval, the Training Program and associated procedure(s) that describe the initial training that must be provided to new employees who will be conducting NRC-licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC-licensed activities. The Accurate NDE President or RSO may conduct the initial training for new employees or the annual refresher training. The submittal to the NRC will include (1) an outline of the topics to be covered during the initial training and the refresher training sessions, (2) any procedure(s) that provide guidance on how the Training Program is conducted, and (3) details of the testing that will be conducted to evaluate the effectiveness of the training.

3. *Training Program Requirements:* The training for the current employees, new employees and annual refresher training will include the following elements:

• The training will include the elements of willfulness discussed in the NRC Enforcement Manual (Chapter 6) and will include some examples of enforcement actions the NRC has taken against individuals (which are publicly available on the NRC's Web site).

• The training must include the requirements contained in 10 CFR 30.9, ''Completeness and Accuracy of Information''; 10 CFR 30.10, ''Deliberate Misconduct''; and 10 CFR 30.7, ''Employee Protection.''

• The training will include discussion of the willful issues discussed in the NRC's Notice of Violation and Proposed Imposition of Civil Penalty issued to Accurate NDE on March 20, 2007, and the willful issues discussed in NRC Inspection Report 150–00017/2010–002 issued to Accurate NDE on July 28, 2011.

• The training will include a discussion on the following topics: (1) The importance of following and complying with licensee procedures during off-normal events; (2) the importance of compliance with NRC regulations and licensee procedures; and (3) past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.

• The training will include a discussion of the NRC's policy statement on safety culture and employees must be provided with a copy of the policy statement as contained in NUREG/BR–0500.

• Training will emphasize the requirements of what radiographers must do if required equipment does not function while they are conducting radiography in offshore waters (e.g., survey meter, pocket dosimeter, alarming rate meter, locks on the dark room).

4. *Record Requirements:*

• Records of the training and the test results will be maintained for 5 years and will be made available to the NRC, if requested.

B. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit for NRC review and approval, a procedure for conducting field audits of radiography crews performing work in offshore waters. When possible, the audits must be unannounced. The RSO or an appropriate company manager must conduct an audit of the job performance of each radiographer and radiographer assistant during an actual industrial radiographic operation in offshore waters, at intervals not to exceed 6 months, while there is work being performed under NRC jurisdiction. The procedure must contain the elements the audit will review. Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested.

C. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit for NRC review and approval a procedure for conducting radiography safely in offshore waters. The NRC will review the submitted procedure to ensure it contains the following elements:

1. A requirement that the radiography crew must *ALWAYS* contact the Accurate NDE RSO or a qualified individual designated by the Accurate NDE President, before attempting any source retrieval, no matter if the source is determined to be inside or outside of the guide tube;

2. A requirement to ensure that, for crews performing work in offshore waters, at least one radiographer who is qualified to perform source retrievals will be assigned to the crew and will be physically present while radiography is being conducted;

3. A provision that, after contacting the RSO or qualified individual and obtaining authorization, the radiographer who is qualified to perform source retrievals may perform source retrievals as directed by the RSO or a qualified individual designated by the Accurate NDE President;

4. A qualification program to be provided to train radiographers on source retrieval. Additionally, a description of some of the general methods, which qualified radiographers may use to perform source retrievals, will be included;

5. A requirement that a checklist be completed, which lists all equipment that must be taken to jobs in offshore waters, and that the equipment be functionally checked prior to leaving to perform work in offshore waters (e.g., survey meters, dosimetry, crank out cables, security devices);

D. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit for NRC review and approval, a procedure describing the training that will be conducted for the Accurate NDE RSO and any other manager designated to be on-call, providing details on the NRC notification and reporting requirements contained in 10 CFR 20.2201 and 20.2202, 10 CFR 30.50, and 10 CFR 34.101. The training must be conducted prior to any new individual assuming duties of the RSO or as manager on-call, and the training must be conducted within 30 days of NRC approval of the training procedure for the current RSO and any managers that may be on-call. This training may be conducted internally, as directed by the Accurate NDE President. Records of this training will be maintained for 5 years and made available to the NRC, if requested.

E. Beginning January 1, 2013, Accurate NDE shall submit to the NRC a copy of each procedure used when performing radiography activities within NRC jurisdiction, and each procedure used to train personnel who perform radiography activities within NRC jurisdiction. Starting in 2013, the procedures shall be submitted to the NRC annually by January 31st of each year for 5 years.

F. Accurate NDE shall pay a civil penalty in the amount of $13,500. This civil penalty shall be made in twelve equal payments of $1,125. The first payment shall be made within 30 days of the issuance date of this Confirmatory Order. The remaining 11 payments shall be made in equal payments each month thereafter.

G. After Accurate NDE receives the NRC reviewed and approved procedures specified in Items B through D, Accurate NDE shall implement and comply with the approved procedures when performing work under NRC jurisdiction. The approved procedures, and any subsequent procedural revisions, will remain binding upon Accurate NDE when performing work under NRC jurisdiction for a period of

10 years from the date of the Confirmatory Order.

The NRC will endeavor to complete all reviews of submitted procedures, training programs, and other documents in a timely manner. If the NRC does not approve a required submittal and Accurate NDE believes that the disapproval is unwarranted, Accurate NDE may address the disapproval with the Director, Division of Nuclear Materials Safety, U.S. NRC Region IV.

On December 7, 2011, Accurate NDE consented to issuing this Order with the commitments, as described in Section V below. Accurate NDE further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

IV

Since Accurate NDE has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Accurate NDE's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the Licensee's commitments be confirmed by this Order. Based on the above and Accurate NDE's consent, this Confirmatory Order is immediately effective upon issuance.

V

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 20, 30, 34, and 150, *it is hereby ordered, effective immediately, that:*

A. Accurate NDE will establish a comprehensive training program with the goal of deterring future willful violations by ensuring that its employees understand the importance that the NRC places on violations that are caused by deliberate misconduct, as well as violations caused by careless disregard. Therefore, in addition to discussing deliberate misconduct and careless disregard, the training will also stress the importance of knowing the procedural and regulatory requirements that apply to the work activities and knowing when to stop and verify what the correct action to take is before proceeding in the work activity. The training program will consist of training for all the current and newly hired employees performing NRC-licensed activities and provide for annual refresher training. Accurate NDE will complete the following activities for the training program:

1. *Initial Training Requirements for Current Employees:*

a. Within 60 days of the issuance date of this Confirmatory Order, Accurate NDE will contract with an external contractor to provide training to all of its current employees who are engaged in NRC-licensed activities (up to and including the company president) on what is meant by willfulness and the potential enforcement sanctions that the NRC may take against employees who engage in deliberate misconduct.

b. At least 15 days prior to the date that Accurate NDE intends to execute a contract with the external contractor, Accurate NDE will submit, for NRC review and approval, the resume of the contractor recommended to perform the training.

c. At least 15 days prior to the start of the training, but no later than 30 days after executing the contract with the external training contractor, Accurate NDE will submit for NRC review and approval, an outline of the topics to be covered during this training session.

d. The initial training must be completed for all current employees, within 45 days of NRC's approval of the outline of course topics.

e. Accurate NDE will assess the effectiveness of the training through written testing. Any employee not passing the test will receive remedial training and will be retested. Within 30 days of completing the initial training for all current employees, Accurate NDE will provide to the NRC (1) a letter stating that the training, as specified above, has been completed and (2) the results of the employee testing process.

2. *Initial Training for New Employees and Annual Refresher Training:*

• Within 120 days of the issuance date of this Confirmatory Order, Accurate NDE will submit, for NRC review and approval, the Training Program and associated procedure(s) that describe the initial training that must be provided to new employees who will be conducting NRC-licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC-licensed activities. The Accurate NDE President or RSO may conduct the initial training for new employees or the annual refresher training. The submittal to the NRC will include: (1) An outline of the topics to be covered during the initial training and the refresher training sessions, (2) any procedure(s) that provide guidance on how the Training Program is conducted, and (3) details of the testing that will be conducted to evaluate the effectiveness of the training.

3. *Training Program Requirements:* The training for current employees, new employees and annual refresher training will include the following elements:

a. The training will include the elements of willfulness discussed in the NRC Enforcement Manual (Chapter 6) and will include some examples of enforcement actions the NRC has taken against individuals (which are publicly available on the NRC's Web site).

b. The training must include the requirements contained in 10 CFR 30.9, ''Completeness and Accuracy of Information''; 10 CFR 30.10, ''Deliberate Misconduct''; and 10 CFR 30.7, ''Employee Protection.''

c. The training will include discussion of the willful issues discussed in the NRC's Notice of Violation and Proposed Imposition of Civil Penalty issued to Accurate NDE on March 20, 2007, and the willful issues discussed in NRC Inspection Report 150–00017/2010–002 issued to Accurate NDE on July 28, 2011.

d. The training will include a discussion on the following topics: (1) The importance of following and complying with licensee procedures during off-normal events; (2) the importance of compliance with NRC regulations and licensee procedures; and (3) past radiography events that have resulted in overexposures to individuals, including the health effects of such overexposures.

e. The training will include a discussion of the NRC's policy statement on safety culture and employees must be provided with a copy of the policy statement as contained in NUREG/BR–0500.

f. Training will emphasize the requirements of what radiographers must do if required equipment does not function while they are conducting radiography in offshore waters (e.g., survey meter, pocket dosimeter, alarming rate meter, locks on the dark room).

4. *Record Requirements:*

• Records of the training and the test results will be maintained for 5 years and will be made available to the NRC, if requested.

B. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit for NRC review and approval, a procedure for conducting field audits of radiography crews working in offshore waters. When possible, the audits must be unannounced. The RSO or an appropriate company manager must conduct an audit of the job performance

of each radiographer and radiographer assistant during an actual industrial radiographic operation in offshore waters, at intervals not to exceed 6 months, while there is work being performed under NRC jurisdiction. The procedure must contain the elements the audit will review. Records of audits and audit findings shall be maintained for 5 years and made available to the NRC, if requested.

C. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit for NRC review and approval a procedure for conducting radiography safely in offshore waters. The NRC will review the submitted procedure to ensure it contains the following elements:

1. A requirement that the radiography crew must *ALWAYS* contact the Accurate NDE RSO or a qualified individual designated by the Accurate NDE President, before attempting any source retrieval, no matter if the source is determined to be inside or outside of the guide tube;

2. A requirement to ensure that, ensure that, for crews performing work in offshore waters, at least one radiographer who is qualified to perform source retrievals will be assigned to the crew and will be physically present while radiography is being conducted;

3. A provision that, after contacting the RSO or qualified individual and obtaining authorization, the radiographer who is qualified to perform source retrievals, may perform source retrievals as directed by the RSO or a qualified individual designated by the Accurate NDE President;

4. A qualification program be provided to train radiographers on source retrieval. Additionally, a description of some of the general methods that qualified radiographers may use to perform source retrievals will be included;

5. A requirement that a checklist be completed, which lists all equipment that must be taken to jobs in offshore waters, and that the equipment be functionally checked prior to leaving to perform work in offshore waters (e.g., survey meters, dosimetry, crank out cables, security devices);

D. Within 90 days of the issuance date of this Confirmatory Order, Accurate NDE will develop and submit, for NRC review and approval, a procedure describing the training that will be conducted for the Accurate NDE RSO and any other manager designated to be on-call, providing details on the NRC notification and reporting requirements contained in 10 CFR 20.2201 and 20.2202, 10 CFR 30.50, and 10 CFR 34.101. The training must be conducted prior to any new individual assuming duties of the RSO or as manager on-call, and the training must be conducted within 30 days of NRC approval of the training procedure for the current RSO and any managers that may be on-call. This training may be conducted internally, as directed by the Accurate NDE President. Records of this training will be maintained for 5 years and made available to the NRC, if requested.

E. Beginning January 1, 2013, Accurate NDE shall submit to the NRC a copy of each procedure used when performing radiography activities within NRC jurisdiction, and each procedure used to train personnel who perform radiography activities within NRC jurisdiction. Starting in 2013, the procedures shall be submitted to the NRC annually by January 31st of each year for 5 years.

F. Accurate NDE shall pay a civil penalty in the amount of $13,500.00. This civil penalty shall be made in twelve equal payments of $1,125.00. The first payment shall be made within 30 days of the issuance date of this Confirmatory Order. The remaining 11 payments shall be made in equal payments each month thereafter.

G. After Accurate NDE receives the NRC-reviewed and approved procedures specified in Items B through D, Accurate NDE shall implement and comply with the approved procedures when performing work under NRC jurisdiction. The approved procedures, and any subsequent procedural revisions, will remain binding upon Accurate NDE when performing work under NRC jurisdiction for a period of 10 years from the issuance date of this Confirmatory Order.

The Regional Administrator, NRC Region IV, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause. The NRC will endeavor to complete all reviews of submitted procedures, training programs, and other documents in a timely manner. If the NRC does not approve a required submittal and Accurate NDE believes that the disapproval is unwarranted, Accurate NDE may address the disapproval with the Director, Division of Nuclear Materials Safety, US NRC Region IV.

VI

Any person adversely affected by this Confirmatory Order, other than the Licensee, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than the Licensee) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A Request for Hearing Shall Not Stay the Immediate Effectiveness of this Order.

For the Nuclear Regulatory Commission.

Dated this 19th day of December, 2011.

Elmo E. Collins,

Administrator, NRC Region IV.

[FR Doc. 2012–1502 Filed 1–24–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission, [NRC–2012–0002].

DATE: Week of January 30, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED: Week of January 30, 2012

Monday, January 30, 2012—

1:25 p.m. Affirmation Session (Public Meeting) (Tentative)

a. Final Rule: Requirements for Distribution of Byproduct Material, 10 CFR parts 30, 31, 32, 40, and 70 (RIN 3150–AH91) (Tentative)

b. Final Rule: Advance Notification to Native American Tribes of Transport of Certain Types of Nuclear Waste (RIN 3150–AG41) (Tentative)

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the

transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969, or send an email to *darlene.wright@nrc.gov.*

Dated: January 20, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–1600 Filed 1–23–12; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–109; Order No. 1148]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Bovill, Idaho post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES:

February 1, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61;

February 21, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received three petitions for review of the Postal Service's determination to close the Bovill post office in Bovill, Idaho. The first petition for review received December 28, 2011, was filed by Jamie Fiorino, Pastor, Bovill Presbyterian Church. The second petition for review received January 10, 2012, was filed by Diane L. Holt. The third petition for review received January 10, 2012, was filed by Manley and Karen Waldron. The earliest postmark date is December 14, 2011.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–109 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 1, 2012.

Issue apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. Any responsive pleading by the Postal Service to this notice is due no later than January 30, 2012.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Sean C. Duffy is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register.**

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

December 28, 2011	Filing of Appeal.
January 12, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
January 30, 2012	Deadline for the Postal Service to file any responsive pleading.
February 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 1, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 21, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 12, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–1493 Filed 1–24–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–108; Order No. 1147]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the South Valley Station has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES:

February 1, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61;

February 21, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received two petitions for review of the Postal Service's determination to close the South Valley Station post office in Yerington, Nevada. The first petition for review received December 28, 2011, was filed by Leslie West. The second petition for review received January 10, 2012, was filed by Lisa Smith. The earliest postmark date is December 20, 2011.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–108 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 1, 2012.

Issues apparently raised. Petitioners contend that: (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); and (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is January 30, 2012. In addition, the due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or

memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than January 30, 2012.

2. Any responsive pleading by the Postal Service to this Notice is due no later than January 30, 2012.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Manon A. Boudreault is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

December 28, 2011	Filing of Appeal.
January 30, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
January 30, 2012	Deadline for the Postal Service to file any responsive pleading.
February 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 1, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 21, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–1457 Filed 1–24–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–110; Order No. 1149]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Badger, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: February 3, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61;

February 23, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received four petitions for review of the Postal Service's determination to close the Badger post office in Badger, Iowa. The first petition for review received December 30, 2011, was filed by Myron and Nancy Huyser. The second petition for review received January 4, 2012, was filed by Terry and Judy Kahler. The third petition for review received January 10, 2012, was filed by Ken and Julie Busby. The fourth petition for review received January 4, 2012, was filed by Christopher J. Wendell, Mayor of the City of Badger. The earliest postmark date is December 23, 2011.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–110 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 1, 2012.

Issue apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. Any responsive pleading by the Postal Service to this notice is due no later than January 30, 2012.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

December 30, 2011	Filing of Appeal.
January 30, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
February 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 3, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 23, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 9, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 16, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 20, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–1497 Filed 1–24–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–107; Order No. 1146]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Chilo, Ohio post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: February 1, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; February 21, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received a petition for review of the Postal Service's determination to close the Chilo post office in Chilo, Ohio. The petition for review received December 28, 2011, was filed by Daniel T. Burke and is postmarked December 17, 2011.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–107 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 1, 2012.

Issue apparently raised. Petitioner contends that the Postal Service failed to adequately consider the economic savings resulting from the closure. *See* 39 U.S.C. 404(d)(2)(A)(iv).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and

10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. Any responsive pleading by the Postal Service to this Notice is due no later than January 30, 2012.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Laura R. Schwartz is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

December 28, 2011	Filing of Appeal.
January 12, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
January 30, 2012	Deadline for the Postal Service to file any responsive pleading.
February 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 1, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 21, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 13, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–1449 Filed 1–24–12; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–106; Order No. 1145]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Pierceville, Indiana post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: February 1, 2012, 4:30 p.m., Eastern Time: Deadline for Petitioner's Form 61; February 21, 2012, 4:30 p.m., Eastern Time: Deadline for answering brief in support of the Postal Service. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received three petitions for review of the Postal Service's determination to close the Pierceville post office in Pierceville, Indiana. The first petition for review received December 28, 2011, was filed by James W. Combs. The second petition for review received January 6, 2012, was filed by Debbie Poore. The third petition for review received January 17, 2012, was filed by Amanda Rohrig. The earliest postmark date is December 20, 2011.

The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–106 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than February 1, 2012.

Issue apparently raised. Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The due date for any responsive pleading by the Postal Service to this Notice is January 30, 2012.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to

use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before February 13, 2012. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. Any responsive pleading by the Postal Service to this Notice is due no later than January 30, 2012.

2. The procedural schedule listed below is hereby adopted.

3. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is designated officer of the Commission (Public Representative) to represent the interests of the general public.

4. The Secretary shall arrange for publication of this Notice and Order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

PROCEDURAL SCHEDULE

December 28, 2011	Filing of Appeal.
January 12, 2012	Deadline for the Postal Service to file the applicable administrative record in this appeal.
January 30, 2012	Deadline for the Postal Service to file any responsive pleading.
February 13, 2012	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
February 1, 2012	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
February 21, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
March 7, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
March 14, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
April 18, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2012–1447 Filed 1–24–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29923; File No. 812–13902]

New York Life Insurance and Annuity Corporation, et al., Notice of Application

January 19, 2012.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940, as amended, (the ''1940 Act'') approving certain substitutions of securities (''Substitutions'') and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

Applicants: New York Life Insurance and Annuity Corporation (''NYLIAC'') and NYLIAC Variable Annuity Separate Account—I (''VA I''), NYLIAC Variable Annuity Separate Account—II (''VA II''), NYLIAC Variable Annuity Separate Account—III (''VA III''), NYLIAC Variable Annuity Separate Account—IV (''VA IV''), NYLIAC Variable Universal Life Separate Account—I (''VUL I''), NYLIAC Corporate Sponsored Variable Universal Life Separate Account—I (''Corporate VUL I''), NYLIAC Private Placement Variable Universal Life Separate Account—I (''Private VUL I''), and NYLIAC Private Placement Variable Universal Life Separate Account—II (''Private VUL II'') (collectively, the ''Separate Accounts'' and, together with NYLIAC, the ''Section 26 Applicants''); and Mainstay VP Funds Trust (''MVPFT'' and, together with NYLIAC and the Separate Accounts, the ''Section 17 Applicants''). The Section 26 Applicants and the Section 17 Applicants are collectively referred to herein as the ''Applicants.''

Summary of Application: The Section 26 Applicants seek an order approving the substitution of shares of certain series of MVPFT (the ''Replacement Portfolios'') for shares of series of other registered investment companies (the ''Existing Portfolios'') held by the Separate Accounts to fund certain group and individual variable annuity contracts (''VA Contracts'') and variable universal life insurance policies (''VUL Policies'') issued by NYLIAC (collectively, the ''Contracts''). The Section 17 Applicants seek an order pursuant to Section 17(b) of the 1940 Act to the extent necessary to permit them to effectuate the Substitutions by redeeming all or a portion of the securities of one or more of the Existing Portfolios in-kind and using those securities received to purchase shares of the Replacement Portfolios (as defined herein) (the ''In-Kind Transactions'').

Filing Date: The application was filed on May 10, 2011 and amended applications were filed on December 30, 2011, and January 18, 2012 (as amended, the ''Application'').

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 13, 2012, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: New York Life Insurance and Annuity Corporation and its Separate Accounts, 51 Madison Avenue, New York, New York 10010, Attn: Charles A. Whites, Esq.; MainStay VP Funds Trust c/o New York Life Investment Management LLC, 169 Lackawanna Avenue, Parsippany, New Jersey 07054, Attn: Kevin M. Bopp, Esq. Copy to Jorden Burt, LLP, 1025 Thomas Jefferson Street, NW., Suite 400 East, Washington, DC, 20007, Attn: Richard T. Choi, Esq.

FOR FURTHER INFORMATION CONTACT: Patrick Scott, Senior Counsel, at (202) 551–6763 or Zandra Bailes, Branch Chief, at (202) 551–6759, Office of Insurance Products, Division of Investment Management, SEC.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained via the Commission's Web site by searching for the file number, or for an Applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. NYLIAC is a Delaware stock life insurance company that is licensed to sell life, accident and health insurance, and annuities in the District of Columbia and all states.

2. NYLIAC serves as the depositor of the Separate Accounts, which are segregated asset accounts of NYLIAC established under Delaware law pursuant to resolutions of NYLIAC's Board of Directors to fund the Contracts.

3. Each Separate Account, except for Private VUL I and II, is registered under the 1940 Act as a unit investment trust. Private VUL I and II are exempt from registration under the 1940 Act pursuant to Sections 3(c)(1) and 3(c)(7) thereof. Each Separate Account meets the definition of ''separate account'' contained in Section 2(a)(37) of the 1940 Act.

4. Interests under the Contracts, except for Contracts issued through Private VUL I and II, are registered under the Securities Act of 1933, as amended (the ''1933 Act''). Contracts issued through Private VUL I and II are sold without registration under the 1933 Act in reliance on the private offering exemption of Section 4(2) of the 1933 Act and Regulation D thereunder. Additional information regarding the Contracts affected by the Substitutions, including the applicable registration statements in which they are described, is set out in the Application.

5. Each Separate Account is divided into subaccounts (each a ''Subaccount,'' collectively, the ''Subaccounts''). Each Subaccount invests in the shares of a single portfolio of an underlying mutual fund (''Portfolio''). Contract owners and participants in group Contracts (each a ''Contract Owner'' and collectively, the ''Contract Owners'') may allocate some or all of their Contract value (''Contract value'') to one or more Subaccounts that are available as investment options under the Contracts.

6. Under the Contracts, NYLIAC reserves the right to substitute, for the shares of a Portfolio held in any Subaccount, the shares of another Portfolio. The prospectuses or offering documents, as applicable, for the Contracts include disclosure of this reservation of right.

7. MVPFT is a Delaware statutory trust that is registered with the Commission as an open-end management investment company under the 1940 Act (File No. 811–03833–01). MVPFT currently consists of 21 series (''Series''), each of which generally offers two classes of shares, namely the Initial Class and Service Class. The Initial and Service Classes differ only in that the Service Class shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act, which plan imposes a 12b-1 fee equal to an annual rate of 0.25% of the average daily net assets attributable to the Service Class. Shares of the Series are registered under the 1933 Act (File No. 002–86082). On July 7, 2011, MVPFT filed an amendment to its Form N–1A registration statement to register the Replacement Portfolios under the 1940 Act and the offering of their shares under the 1933 Act.

8. New York Life Investment Management LLC (''New York Life Investments'' or the ''Manager''), an indirect wholly-owned subsidiary of New York Life, serves as the investment manager of each Series of MVPFT. MVPFT has received an order from the Commission that, subject to certain conditions, including approval of the MVPFT Board of Trustees (''Board''), including Trustees who are not ''interested persons,'' as defined in Section 2(a)(19) of the 1940 Act, and without the approval of shareholders, to: (i) Engage a new or additional sub-adviser (''Subadvisor'') for each Series; (ii) enter into and materially amend existing sub-advisory agreements; and (iii) terminate and replace Subadvisors (File No. 812–13257; the ''Manager of Managers Order'').

9. NYLIAC, on behalf of itself and its Separate Accounts, proposes to exercise its contractual right to substitute Portfolio shares held in Subaccounts of its Separate Accounts by replacing shares of the Existing Portfolios listed below with shares of the corresponding Replacement Portfolios listed below:

Substitution	*Existing Portfolio*	*Replacement Portfolio*
1	Van Eck VIP Global Hard Assets Fund—Initial Class	MainStay VP Van Eck Global Hard Assets Portfolio—Initial Class
2	Janus Aspen Balanced Portfolio—Institutional Shares	MainStay VP Janus Balanced Portfolio—Initial Class*
	Janus Aspen Balanced Portfolio—Service Shares	MainStay VP Janus Balanced Portfolio—Service Class
3	MFS Utilities Series—Initial Class	MainStay VP MFS Utilities Portfolio—Initial Class
	MFS Utilities Series—Service Class	MainStay VP MFS Utilities Portfolio—Service Class
4	T. Rowe Price Equity Income Portfolio—I	MainStay VP T. Rowe Price Equity Income Portfolio—Initial Class
	T. Rowe Price Equity Income Portfolio—II	MainStay VP T. Rowe Price Equity Income Portfolio—Service Class

Substitution	*Existing Portfolio*	*Replacement Portfolio*
5	PIMCO Real Return Portfolio—Administrative Class	MainStay VP PIMCO Real Return Portfolio—Initial Class
	PIMCO Real Return Portfolio—Advisor Class	MainStay VP PIMCO Real Return Portfolio—Service Class
6	Universal Institutional Funds, Inc. (“UIF”) Emerging Markets Equity Portfolio—Class I.	MainStay VP DFA/DuPont Capital Emerging Markets Equity Portfolio—Initial Class
	UIF Emerging Markets Equity Portfolio—Class II	MainStay VP DFA/DuPont Capital Emerging Markets Equity Portfolio—Service Class
7	Alger Small Cap Growth Portfolio—Class I–2 Shares	MainStay VP Eagle Small Cap Growth Portfolio—Initial Class*
	Alger Small Cap Growth Portfolio—Class S Shares	MainStay VP Eagle Small Cap Growth Portfolio—Service Class
8	Royce Small-Cap Portfolio—Investment Class	MainStay VP Eagle Small Cap Growth Portfolio—Initial Class*
9	Calvert VP SRI Balanced Portfolio	MainStay VP Janus Balanced Portfolio—Initial Class*

* For VA Contracts, following the Proposed Substitutions, the Initial Class of these Replacement Portfolios will be available only to those VA Contract Owners who had Contract values allocated to the Subaccounts investing in the Institutional or Class I–2 shares, as applicable, of the corresponding Existing Portfolios on the Substitution Date. VA Contract Owners who transfer their entire Contract value out of the Subaccounts corresponding to these Replacement Portfolios will not be permitted to transfer back in.

10. The investment objectives of each Existing Portfolio and its corresponding Replacement Portfolio are set out below. Additional information for each Existing Portfolio and Replacement Portfolio, including principal investment strategies, principal risks, asset sizes, and comparative performance history can be found in the Application.

Existing Portfolio	Replacement Portfolio
The Van Eck VIP Global Hard Assets Fund seeks long-term capital appreciation by investing primarily in hard asset securities. Income is a secondary consideration.	The MainStay VP Van Eck Global Hard Assets Portfolio seeks long-term capital appreciation by investing primarily in hard asset securities. Income is a secondary consideration.
The Janus Aspen Balanced Portfolio seeks long-term capital growth, consistent with preservation of capital and balanced by current income.	The MainStay VP Janus Balanced Portfolio seeks long-term capital growth, consistent with preservation of capital and balanced by current income.
The MFS Utilities Series’ investment objective is to seek total return	The MainStay VP MFS Utilities Portfolio seeks total return.
The T. Rowe Price Equity Income Portfolio seeks to provide substantial dividend income as well as long-term growth of capital through investments in the common stocks of established companies.	The MainStay VP T. Rowe Price Equity Income Portfolio seeks to provide substantial dividend income as well as long-term growth of capital through investments in the common stocks of established companies.
The PIMCO Real Return Portfolio seeks maximum real return, consistent with preservation of real capital and prudent investment management.	The MainStay VP PIMCO Real Return Portfolio seeks maximum real return, consistent with preservation of real capital and prudent investment management.
The Universal Institutional Funds Inc. (“UIF”) Emerging Markets Equity Portfolio seeks long-term capital appreciation by investing primarily in growth-oriented equity securities of issuers in emerging market countries.	The MainStay VP DFA/DuPont Capital Emerging Markets Equity Portfolio seeks long-term capital appreciation.
The Alger Small Cap Growth Portfolio seeks long-term capital appreciation.	The MainStay VP Eagle Small Cap Growth Portfolio seeks long-term capital appreciation.
The Royce Small-Cap Portfolio’s investment goal is long-term growth of capital.	The MainStay VP Eagle Small Cap Growth Portfolio seeks long-term capital appreciation.
The Calvert VP SRI Balanced Portfolio seeks to achieve a competitive total return through an actively managed portfolio of stocks, bonds, and money market instruments which offer income and capital growth opportunity and which satisfy the investment criteria, including financial, sustainability and social responsibility factors.	The MainStay VP Janus Balanced Portfolio seeks long-term capital growth, consistent with preservation of capital and balanced by current income.

11. The management fees and other expenses of each Existing Portfolio and corresponding Replacement Portfolio as of December 31, 2010, are set out below. The data for the Existing Portfolios are shown as a percentage of average daily net assets as of December 31, 2010. The data for the Replacement Portfolios are estimates for the current year based on anticipated asset levels following the Substitutions.

SUBSTITUTION 1

	Existing Portfolio	Replacement Portfolio
	Van Eck VIP Global Hard Assets Fund	MainStay VP Van Eck Global Hard Assets Portfolio
Initial Class/Initial Class.		
Management Fee	First $500 million: 1.00 Next $250 million: 0.90. Over $750 million: 0.70. Current: 0.89.	0.89
12b–1 Fee	0.00	0.00
Other Expenses	0.08	0.07
Total Gross Expenses	0.97	0.96

SUBSTITUTION 1—Continued

	Existing Portfolio	Replacement Portfolio
	Van Eck VIP Global Hard Assets Fund	MainStay VP Van Eck Global Hard Assets Portfolio
Expense Waiver	0.00	0.00
Total Net Expenses	0.97	0.96

SUBSTITUTION 2

	Existing Portfolio	Replacement Portfolio
	Janus Aspen Balanced Portfolio	MainStay VP Janus Balanced Portfolio
Institutional Shares/Initial Class:		
Management Fee	0.55	0.55
12b–1 Fee	0.00	0.00
Other Expenses	0.03	0.05
Total Gross Expenses	0.58	0.60
Expense Waiver	0.00	0.02
Total Net Expenses	0.58	0.58
Service Shares/Service Class:		
Management Fee	0.55	0.55
12b–1 Fee	0.25	0.25
Other Expenses	0.03	0.05
Total Gross Expenses	0.83	0.85
Expense Waiver	0.00	0.02
Total Net Expenses	0.83	0.83

SUBSTITUTION 3

	Existing Portfolio	Replacement Portfolio
	MFS Utilities Series	MainStay VP MFS Utilities Portfolio
Initial Class/Initial Class:		
Management Fee	First $1 billion: 0.75 Over $1 billion: 0.70. Current: 0.73.	0.73
12b–1 Fee	0.00	0.00
Other Expenses	0.08	0.05
Total Gross Expenses	0.81	0.78
Expense Waiver	0.00	0.00
Total Net Expenses	0.81	0.78
Service Class/Service Class:		
Management Fee	0.73	0.73
12b–1 Fee	0.25	0.25
Other Expenses	0.08	0.05
Total Gross Expenses	1.06	1.03
Expense Waiver	0.00	0.00
Total Net Expenses	1.06	1.03

SUBSTITUTION 4

	Existing Portfolio	Replacement Portfolio
	T. Rowe Price Equity Income Portfolio	MainStay VP T. Rowe Price Equity Income Portfolio
Class I/Initial Class:		
Management Fee	0.85	First $500 million: 0.80. Over $500 million: 0.775. Effective Rate: 0.80.
12b–1 Fee	0.00	0.00.
Other Expenses	0.00	0.05.
Total Gross Expenses	0.85	0.85.
Expense Waiver	0.00	0.05.
Total Net Expenses	0.85	0.80.
Class II/Service Class:		
Management Fee	0.85	First $500 million: 0.80. Over $500 million: 0.775.

SUBSTITUTION 4—Continued

	Existing Portfolio	Replacement Portfolio
	T. Rowe Price Equity Income Portfolio	MainStay VP T. Rowe Price Equity Income Portfolio
		Effective Rate: 0.80.
12b-1 Fee	0.25	0.25.
Other Expenses	0.00	0.05.
Total Gross Expenses	1.10	1.10.
Expense Waiver	0.00	0.05.
Total Net Expenses	1.10	1.05.

SUBSTITUTION 5

	Existing Portfolio	Replacement Portfolio
	PIMCO Real Return Portfolio	MainStay VP PIMCO Real Return Portfolio
Administrative Class/Initial Class:		
Management Fee	0.50	0.50
Service Fees	0.15	0.00
Other Expenses	0.01	0.13
Total Gross Expenses	0.66	0.63
Expense Waiver	0.00	0.00
Total Net Expenses	0.66	0.63
Adviser Class/Service Class:		
Management Fee	0.50	0.50
12b–1 Fee	0.25	0.25
Other Expenses	0.01	0.13
Total Gross Expenses	0.76	0.88
Expense Waiver	0.00	0.12
Total Net Expenses	0.76	0.76

SUBSTITUTION 6

	Existing Portfolio	Replacement Portfolio
	UIF EMERGING Markets Equity Portfolio	MainStay VP DFA/DuPont Capital Emerging Markets Equity Portfolio
Class I/Initial Class:		
Management Fee	First $500 million: 1.25 Next $500 million: 1.20. Next $1.5 billion: 1.15. Over $2.5 billion: 1.00. Current: 1.22.	1.20
12b–1 Fee	0.00	0.00
Other Expenses	0.39	0.17
Total Gross Expenses	1.61	1.37
Expense Waiver	0.01	0.00
Total Net Expenses	1.60	1.37
Class II/Service Class:		
Management Fee	1.22	1.20
12b–1 Fee	0.35	0.25
Other Expenses	0.39	0.17
Total Gross Expenses	1.96	1.62
Expense Waiver	0.31	0.00
Total Net Expenses	1.65	1.62

SUBSTITUTION 7

	Existing Portfolio	Replacement Portfolio
	Alger Small Cap Growth Portfolio	MainStay VP Eagle Small Cap Growth Portfolio
Class I–2/Initial Class:		
Management Fee	0.81	0.81
12b–1 Fee	0.00	0.00
Other Expenses	0.14	0.08

SUBSTITUTION 7—Continued

	Existing Portfolio	Replacement Portfolio
	Alger Small Cap Growth Portfolio	MainStay VP Eagle Small Cap Growth Portfolio
Total Gross Expenses	0.95	0.89
Expense Waiver	0.00	0.00
Total Net Expenses	0.95	0.89
Class S Shares/Service Class:		
Management Fee	0.81	0.81
12b–1 Fee	0.25	0.25
Other Expenses	0.16	0.08
Total Gross Expenses	1.22	1.14
Expense Waiver	0.00	0.00
Total Net Expenses	1.22	1.14

SUBSTITUTION 8

	Existing Portfolio	Replacement Portfolio
	Royce Small-Cap Portfolio	MainStay VP Eagle Small Cap Growth Portfolio
Investment Class/Initial Class:		
Management Fee	1.00	0.81
12b–1 Fee	0.00	0.00
Other Expenses	0.06	0.08
Total Gross Expenses	1.06	0.89
Expense Waiver	0.00	0.00
Total Net Expenses	1.06	0.89

SUBSTITUTION 9

	Existing Portfolio	Replacement Portfolio
	Calvert VP SRI Balanced Portfolio	MainStay VP Janus Balanced Portfolio
Undesignated Shares/Initial Class:		
Management Fee*	First $500 million: 0.70 Next $500 million: 0.65. Over $1 billion: 0.60. Current: 0.70.	0.55
12b–1 Fee	0.00	0.00
Other Expenses	0.21	0.05
Total Gross Expenses	0.91	0.60
Expense Waiver	0.00	0.02
Total Net Expenses	0.91	0.58

* Fee shown for Existing Portfolio includes administrative fee of 0.275.

12. NYLIAC represents that it will not to increase Separate Account expenses under the Contracts affected by the Proposed Substitutions during any period that the contractual limitation on Portfolio expenses described in Section II.D.4 of the Application, is in place.

13. The Substitutions are part of an ongoing effort by NYLIAC to not only make its Contracts more attractive to existing and prospective Contract Owners, but also to make the Contracts easier to administer. The Section 26 Applicants believe the Proposed Substitutions will help to accomplish these goals for several reasons. The Substitutions are expected to result in the same or lower Portfolio operating expenses, either on a gross basis or on a net basis as the result of contractual expense waivers. In addition, the Substitutions will result in fewer and more uniform disclosures and communications, which the Section 26 Applicants believe will enable Contract Owners to more easily locate, compare, and evaluate the information about their investment options under the Contracts. Because the Replacement Portfolios are managed by an affiliate of NYLIAC, greater coordination and consolidation can occur regarding the delivery of prospectuses, supplements, and other disclosures and communications, thereby reducing the volume of mailings a Contract Owner might otherwise receive. Subject to shareholder approval of the Manager of Managers arrangement, the Substitutions also will result in more investment options under the Contracts having the improved portfolio manager selection afforded by MVPFT's Manager of Managers Order. Moreover, the Substitutions will enable NYLIAC to more efficiently administer those aspects of the Contracts that pertain to Portfolios by enabling NYLIAC to work principally with its affiliate, New York Life Investments, rather than several third party investment advisers (''Advisers'') in different locations with different policies, procedures, systems, and availability. Substitutions 7, 8, and 9

also will simplify the Portfolio offerings by eliminating overlapping offerings that largely duplicate one another by having substantially similar investment objectives, strategies, and risks.

14. The Section 26 Applicants currently expect that the Substitutions will be carried out on or about February 17, 2012, or on a later date for certain VUL Policies due to administrative reasons (each a ''Substitution Date'').

15. The Substitutions will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission or in other supplemental disclosure documents (collectively, ''Supplements'') and delivered to all affected Contract Owners at least 30 days before each applicable Substitution Date.

16. Each Supplement will give the relevant Contract Owners notice of NYLIAC's intent to substitute shares of the Existing Portfolios as described in the Application on the Substitution Date. Each Supplement also will advise Contract Owners that from the date of the Supplement until the Substitution Date, Contract Owners are permitted to transfer all of or a portion of their Contract value out of any Subaccount investing in an Existing Portfolio (''Existing Portfolio Subaccount'') to any other available Subaccounts offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts.

17. In addition, each Supplement will (a) Instruct Contract Owners how to submit transfer requests in light of the Proposed Substitutions; (b) advise Contract Owners that any Contract value remaining in an Existing Portfolio Subaccount on the Substitution Date will be transferred to a Subaccount investing in the corresponding Replacement Portfolio (''Replacement Portfolio Subaccount''), and that the Substitutions will take place at relative net asset value; (c) inform Contract Owners that for at least thirty (30) days following the Substitution Date, NYLIAC will permit Contract Owners to make transfers of Contract value out of each Replacement Portfolio Subaccount to any other available Subaccounts offered under their Contracts without the transfer being counted as a transfer for purposes of transfer limitations and fees that would otherwise be applicable under the terms of the Contracts; and (d) inform Contract Owners that, except as described in the market timing limitations section of the relevant prospectus, NYLIAC will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers out of a Replacement Portfolio Subaccount for at least thirty (30) days after the Substitution Date.

18. NYLIAC will send Contract Owners the prospectus for the Replacement Portfolios in accordance with applicable legal requirements. The prospectus for the Replacement Portfolio will disclose and explain the substance and effect of the Manager of Managers Order and will disclose that the Replacement Portfolios may not rely on the Order without first obtaining shareholder approval. No Replacement Portfolio will rely on the Manager of Managers Order unless such action is approved by a majority of each Replacement Portfolio's outstanding voting securities, as defined in the 1940 Act, at a meeting whose record date is after the Proposed Substitutions have been effected.

19. Within five (5) business days after the Substitution Date, Contract Owners will be sent a written confirmation of the completed Substitutions in accordance with Rule 10b–10 under the Securities Exchange Act of 1934, as amended. The confirmation statement will include or be accompanied by a statement that reiterates the free transfer rights disclosed in the Supplements.

20. Each Substitution will take place at the applicable Existing and Replacement Portfolios' relative per share net asset values determined on the Substitution Date in accordance with Section 22 of the 1940 Act and Rule 22c–1 thereunder. Accordingly, the Substitutions will have no negative financial impact on any Contract Owner. Each Substitution will be effected by having each Existing Portfolio Subaccount redeem its Existing Portfolio shares in cash and/or in-kind (as described in the Application) on the Substitution Date at net asset value per share and purchase shares of the appropriate Replacement Portfolio at net asset value per share calculated on the same date. In the event that either the Manager or the relevant Subadvisor of a Replacement Portfolio declines to accept, on behalf of the Replacement Portfolio, securities redeemed in-kind by an Existing Portfolio, such Existing Portfolio shall instead provide cash equal to the value of the declined securities so that Contract Owners' Contract values will not be adversely impacted or diluted.

21. NYLIAC or an affiliate will pay all expenses and transaction costs reasonably related to the Substitutions, including all legal, accounting, and brokerage expenses relating to the Substitutions, the above-described disclosure documents, and the Application. No costs of the Substitutions will be borne directly or indirectly by Contract Owners. Affected Contract Owners will not incur any fees or charges as a result of the Substitutions, nor will their rights or the obligations of NYLIAC under the Contracts be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract Owners to be greater after the Substitutions than before the Substitutions.

22. The Manager will enter into a written contract with the Replacement Portfolios whereby during the two years following the Substitution Date the annual net operating expenses of each Replacement Portfolio will not exceed the annual net operating expenses of each corresponding Existing Portfolio for the fiscal year ended December 31, 2010.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. Section 26(c) requires the Commission to issue an order approving a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Section 26 Applicants assert that the terms and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. The Substitutions will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the 1940 Act:

(a) The costs reasonably related to the Substitutions will be borne by NYLIAC or an affiliate and will not be borne by Contract Owners. No charges will be assessed to the Contract Owners to effect the Substitutions.

(b) The Substitutions will be effected, in all cases, at the relative net asset values of the shares of the Existing and Replacement Portfolios, without the imposition of any transfer or similar charge and with no change in the amount of any Contract Owner's Contract value.

(c) The Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract

Owners to be greater after the Substitutions than before the Substitutions, and in each case will result in Contract Owners' Contract values being moved to a Replacement Portfolio with the same or lower total expenses than those of the corresponding Existing Portfolio.

(d) Expense limits will be in place for two years following the Substitution Date to assure that Contract Owners investing in Replacement Portfolio Subaccounts will not incur expenses following the Substitutions that are higher than what they were prior to the Substitutions when they invested in the Existing Portfolio Subaccounts.

(e) All affected Contract Owners will be given notice of the Substitutions prior to the Substitution Date and will have an opportunity to reallocate their Contract value among other available Subaccounts without the imposition of any charge or limitation (unless such transfers are made in connection with market timing or other disruptive trading activity), thereby minimizing the likelihood of being invested through a Subaccount in an undesired Portfolio.

(f) The Substitutions will in no way alter the insurance benefits to Contract Owners or the contractual obligations of NYLIAC.

(g) The Substitutions will in no way alter the tax treatment of Contract Owners in connection with their Contracts, and no tax liability will arise for Contract Owners as a result of the Substitutions.

(h) No Replacement Portfolio will rely on the Manager of Managers Order unless such action is approved by a majority of each Replacement Portfolio's outstanding voting securities, as defined in the 1940 Act, at a meeting whose record date is after the Proposed Substitutions have been effected.

4. The Section 17 Applicants request that the Commission issue an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) of the 1940 Act to the extent necessary to permit them to carry out the In-Kind Transactions.

5. Section 17(a)(1) of the 1940 Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

6. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order exempting any proposed transaction from the provisions of Section 17(a) if evidence establishes that: (1) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (3) the proposed transaction is consistent with the general purposes of the 1940 Act.

7. Certain Existing and Replacement Portfolios may be deemed to be affiliated persons of one another, or affiliated persons of an affiliated person. Shares held by a separate account of an insurance company are legally owned by the insurance company. Currently, NYLIAC, through its Separate Accounts, owns more than 25% of the shares of each Existing Portfolio other than the PIMCO Real Return Portfolio (NYLIAC currently owns less than 5% of the PIMCO Real Return Portfolio), and therefore may be deemed to be a control person of these Existing Portfolios. In addition, New York Life Investments, as the Manager of the Replacement Portfolios, may be deemed to be a control person thereof. Because NYLIAC and New York Life Investments are under common control, entities that they control likewise may be deemed to be under common control, and thus affiliated persons of each other, notwithstanding the fact that the Contract Owners may be considered the beneficial owners of those shares held in the Separate Accounts.

8. These Existing Portfolios and the Replacement Portfolios also may be deemed to be affiliated persons of affiliated persons. This result follows from the fact that, regardless of whether NYLIAC can be considered to control these Existing and Replacement Portfolios, NYLIAC may be deemed to be an affiliated person thereof because it, through its Separate Accounts, owns of record 5% or more of the outstanding shares of such Portfolios. In addition, NYLIAC may be deemed an affiliated person of the Replacement Portfolios because its affiliate, New York Life Investments, may be deemed to control the Replacement Portfolios by virtue of serving as their investment adviser. As a result of these relationships, each of these Existing Portfolios may be deemed to be an affiliated person of an affiliated person (NYLIAC or the Separate Accounts) of the Replacement Portfolios, and vice versa.

9. The proposed In-Kind Transactions, therefore, could be seen as the indirect purchase of shares of a Replacement Portfolio with portfolio securities of the corresponding Existing Portfolio and conversely the indirect sale of portfolio securities of the Existing Portfolio for shares of the corresponding Replacement Portfolio. The proposed In-Kind Transactions also could be categorized as a purchase of shares of the Replacement Portfolio by the Existing Portfolio, acting as principal, and a sale of portfolio securities by the Existing Portfolio, acting as principal, to the Replacement Portfolio. In addition, the proposed In-Kind Transactions could be viewed as a purchase of securities from the Existing Portfolio and a sale of securities to the Replacement Portfolio by NYLIAC (or the Separate Accounts), acting as principal. If characterized in this manner, the proposed In-Kind Transactions may be deemed to contravene Section 17(a) due to the affiliated status of these entities.

10. The Section 17 Applicants maintain that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received, as described in this Application, are reasonable and fair and do not involve overreaching on the part of any person concerned because: (1) The proposed In-Kind Transactions will be effected at the respective net asset values of the Existing Portfolio and the Replacement Portfolio involved, as determined in accordance with the procedures disclosed in their respective registration statements and as required by Rule 22c–1 under the 1940 Act, and, therefore, will not adversely affect or dilute the interests of Contract Owners; and (2) the proposed In-Kind Transactions will comply with the conditions set forth in Rule 17a–7 and the 1940 Act, other than the requirement relating to cash consideration. Even though the proposed In-Kind Transactions will not comply with the cash consideration requirement of paragraph (a) of Rule 17a–7, the terms of the proposed In-Kind Transactions will offer to the relevant Existing and Replacement Portfolios the same degree of protection from overreaching that Rule 17a–7 generally provides in connection with the purchase and sale of securities under that Rule in the ordinary course of business. In particular, the Section 17 Applicants cannot effect the proposed In-Kind Transactions at a price that is disadvantageous to either an Existing Portfolio or a Replacement Portfolio, and the proposed In-Kind Transactions will not occur absent an exemptive order from the Commission.

11. The Section 17 Applicants also submit that the proposed In-Kind

Transactions will be consistent with the policies of each of the Existing Portfolios and the Replacement Portfolios involved in such Transactions, as recited in their current registration statement and reports filed with the Commission. Finally, the Section 17 Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and the Section 17 Applications request an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66202/January 20, 2012]

Order Making Fiscal Year 2012 Annual Adjustments to Transaction Fee Rates

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.[3]

Section 31 of the Exchange Act requires the Commission to annually adjust the fee rates applicable under Sections 31(b) and (c) to a uniform adjusted rate, and in some circumstances, to also make a mid-year adjustment. On April 29, 2011, the Commission issued an order establishing the uniform adjusted rate for fiscal year 2012 and beyond.[4] We noted in that order, however, that if a regular appropriation to the Commission for fiscal year 2012 was not enacted by October 1, 2011, the new uniform adjusted rate would never go into effect and the Commission would need to establish a new uniform adjusted rate for fiscal year 2012 pursuant to amendments made to Section 31 of Exchange Act by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[5] Because a regular appropriation to the Commission for fiscal year 2012 was not enacted by October 1, 2011, the Commission now is required to establish a new fee rate for fiscal year 2012 pursuant to the amended provisions of Section 31 of the Exchange Act.

II. Fiscal Year 2012 Annual Adjustment to the Fee Rate

The Dodd-Frank Act amendments to Section 31 of the Exchange Act establish a new method for annually adjusting the fee rates applicable under Sections 31(b) and (c) of the Exchange Act. Specifically, the Commission must now adjust the fee rates to a uniform adjusted rate that is reasonably likely to produce aggregate fee collections (including assessments on security futures transactions) equal to the regular appropriation to the Commission for the applicable fiscal year.[6] In short, the new fee rate is determined by (1) subtracting the sum of fees estimated to be collected during fiscal year 2012 prior to the effective date of the new fee rate and estimated assessments on securities futures transactions to be collected under Section 31(d) of the Exchange Act for all of fiscal year 2012 from an amount equal to the regular appropriation to the Commission for fiscal year 2012, and (2) dividing the difference by the estimated aggregate dollar amount of sales for the remainder of the fiscal year following the effective date of the new fee rate.

The regular appropriation to the Commission for fiscal year 2012 is $1,321,000,000. The Commission estimates that it will collect $503,552,340 in fees for the period prior to the effective date of the new fee rate and $17,328 in assessments on round turn transactions in security futures products during all of fiscal year 2012.[7] Using a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal year 2012 (developed after consultation with the Congressional Budget Office and the Office of Management and Budget), the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal year 2012 to be $45,419,684,665,277.

As described above, the uniform adjusted rate is computed by dividing the residual fees to be collected of $817,430,332 by the estimate of the aggregate dollar amount of sales for the remainder of fiscal year 2012 of $45,419,684,665,277. This results in a uniform adjusted rate for fiscal year 2012 of $18.00 per million.[8]

III. Effective Dates of the Annual Adjustments

Section 31(j)(4)(A) of the Exchange Act provides that the fiscal year 2012 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2011, or 60 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted. The regular appropriation to the Commission for fiscal year 2012 was enacted on December 23, 2011, and accordingly, the new fee rates applicable under Sections 31(b) and (c) of the Exchange Act will take effect on February 21, 2012.

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] Exchange Act Rel. No. 34–64373, Order Making Fiscal Year 2012 Annual Adjustments to the Fee Rates Applicable under Section 31 of the Securities Exchange Act of 1934 (April 29, 2011).]

[5] Prior to amendment by the Dodd-Frank Act, Section 31(j)(4)(A) of the Exchange Act provided that the fiscal year 2012 annual adjustments to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall take effect on the later of October 1, 2011, or 30 days after the date on which a regular appropriation to the Commission for fiscal year 2012 is enacted.

Section 991 of the Dodd-Frank Act, however, amended Section 31 of the Exchange Act effective on the later of October 1, 2011 or the date of enactment of an Act making a regular appropriation to the Commission for fiscal year 2012. Those amendments are now effective, because a regular appropriation to the Commission was enacted on December 23, 2011. The amendments require the Commission to make a new adjustment to the fee rates applicable under Section 31 for fiscal year 2012.

[6] *See* 15 U.S.C. 78ee(j)(1) (The Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the baseline estimate of the aggregate dollar amount of sales for such fiscal year, is reasonably likely to produce aggregate fee collections under [Section 31] (including assessments collected under [Section 31(d)]) that are equal to the regular appropriation to the Commission by Congress for such fiscal year.'').

[7] The estimate of fees to be collected prior to the effective date of the new fee rate is determined by applying the current fee rate to the dollar amount of sales prior to the effective date of the new fee rate.

[8] Appendix A shows the purely arithmetical process of calculating the fiscal year 2012 annual adjustment. The appendix also includes the data used by the Commission in making this adjustment.

IV. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,[9]

It is hereby ordered that the fee rates applicable under Sections 31(b) and (c) of the Exchange Act shall be $18.00 per million effective on February 21, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

Appendix A

This appendix provides the formula for determining the annual adjustment to the fee rates applicable under Sections 31(b) and (c) of the Exchange Act for fiscal year 2012.[10] Section 31 of the Exchange Act requires the fee rates to be adjusted so that it is reasonably likely that the Commission will collect aggregate fees equal to its regular appropriation for fiscal year 2012. To make the adjustment, the Commission must project the aggregate dollar amount of covered sales of securities on the securities exchanges and certain over-the-counter markets over the course of the year. The fee rate equals the ratio of the Commission's regular appropriation for fiscal year 2012 (less the sum of fees to be collected during fiscal year 2012 prior to the effective date of the new fee rate and aggregate assessments on security futures transactions during fiscal year 2012) to the projected aggregate dollar amount of covered sales for fiscal year 2012 (less the aggregate dollar amount of covered sales prior to the effective date of the new fee rate).

For 2012, the Commission has estimated the aggregate dollar amount of covered sales by projecting forward the trend established in the previous decade. More specifically, the dollar amount of covered sales was forecasted for months subsequent to November 2011, the last month for which the Commission has data on the dollar volume of covered sales.[11]

The following sections describe this process in detail.

A. Baseline Estimate of the Aggregate Dollar Amount of Covered Sales for Fiscal Year 2012

First, calculate the average daily dollar amount of covered sales (ADS) for each month in the sample (November 2001—November 2011). The monthly aggregate dollar amount of covered sales (exchange plus certain over-the-counter markets) is presented in column C of Table A.

Next, calculate the change in the natural logarithm of ADS from month to month. The average monthly percentage growth of ADS over the entire sample is 0.0087 and the standard deviation is 0.126. Assuming the monthly percentage change in ADS follows a random walk, calculating the expected monthly percentage growth rate for the full sample is straightforward. The expected monthly percentage growth rate of ADS is 1.7%.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for November 2011 ($261,614,593,980) to forecast ADS for December 2011 ($265,994,342,797 = $261,614,593,980 × 1.017).[12] Multiply by the number of trading days in December 2011 (21) to obtain a forecast of the total dollar volume for the month ($5,585,881,198,747). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume of covered sales are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t/ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, \ldots, \Delta_{120}\}$. These are given by $\mu = 0.0087$ and $\sigma = 0.126$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.017 \times ADS_{t-1}$.

6. For December 2011, this gives a forecast ADS of 1.017 × $261,614,593,980 = $265,994,342,797. Multiply this figure by the 21 trading days in December 2011 to obtain a total dollar volume forecast of $5,585,881,198,747.

7. For January 2012, multiply the December 2011 ADS forecast by 1.017 to obtain a forecast ADS of $270,447,413,976. Multiply this figure by the 20 trading days in January 2012 to obtain a total dollar volume forecast of $5,408,948,279,516.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Use Table A to estimate fees collected for the period 10/1/11 through 2/20/12. The projected aggregate dollar amount of covered sales for this period is $26,226,684,370,811. Actual and projected fee collections at the current fee rate of 0.0000192 are $503,552,340.

2. Estimate the amount of assessments on securities futures products collected during 10/1/11 and 9/30/12 to be $17,328 by projecting a 1.7% monthly increase from a base of $1,387 in November 2011.

3. Subtract the amounts $503,552,340 and $17,328 from the target offsetting collection amount set by Congress of $1,321,000,000 leaving $817,430,332 to be collected on dollar volume for the period 2/21/12 through 9/30/12.

4. Use Table A to estimate dollar volume for the period 2/21/12 through 9/30/12. The estimate is $45,419,684,665,277. Finally, compute the fee rate required to produce the additional $817,430,332 in revenue. This rate is $817,430,332 divided by $45,419,684,665,277 or 0.0000179973.

5. Round the result to the seventh decimal point, yielding a rate of .0000180 (or $18.00 per million).

[9] 15 U.S.C. 78ee(j).

[10] Congress requires that the Commission make a mid-year adjustment to the fee rate if four months into the fiscal year it determines that its forecasts of aggregate dollar volume are reasonably likely to be off by 10% or more.

[11] To determine the availability of data, the Commission compares the date of the appropriation with the date the transaction data are due from the exchanges (10 business days after the end of the month). If the business day following the date of the appropriation is equal to or subsequent to the date the data are due from the exchanges, the Commission uses these data. The appropriation was signed on December 23. The first business day after this date was December 27. Data for November were due from the exchanges on December 14. So the Commission used November 2011 and earlier data to forecast volume for December 2011 and later months.

[12] The value 1.017 has been rounded. All computations are done with the unrounded value.

Table A. Estimation of baseline of the aggregate dollar amount of sales.

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/11 to 2/20/12 ($Millions)	26,226,684
b. Baseline estimate of the aggregate dollar amount of sales, 2/21/12 to 9/30/12 ($Millions)	45,419,685
c. Estimated collections in assessments on securities futures products in FY 2012 ($Millions)	0.017
d. Implied fee rate (($1,321,000,000 - 0.0000192*a - c) /b)	$18.00

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Nov-01	21	1,939,427,217,518	92,353,677,025	-		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,613,808,754,550	113,643,858,893	-0.009		
Apr-04	21	2,418,663,760,191	115,174,464,771	0.013		
May-04	20	2,259,243,404,459	112,962,170,223	-0.019		
Jun-04	21	2,112,826,072,876	100,610,765,375	-0.116		
Jul-04	21	2,209,808,376,565	105,228,970,313	0.045		
Aug-04	22	2,033,343,354,640	92,424,697,938	-0.130		
Sep-04	21	1,993,803,487,749	94,943,023,226	0.027		
Oct-04	21	2,414,599,088,108	114,980,908,958	0.191		
Nov-04	21	2,577,513,374,160	122,738,732,103	0.065		
Dec-04	22	2,673,532,981,863	121,524,226,448	-0.010		
Jan-05	20	2,581,847,200,448	129,092,360,022	0.060		
Feb-05	19	2,532,202,408,589	133,273,810,978	0.032		
Mar-05	22	3,030,474,897,226	137,748,858,965	0.033		
Apr-05	21	2,906,386,944,434	138,399,378,306	0.005		
May-05	21	2,697,414,503,460	128,448,309,689	-0.075		
Jun-05	22	2,825,962,273,624	128,452,830,619	0.000		
Jul-05	20	2,604,021,263,875	130,201,063,194	0.014		
Aug-05	23	2,846,115,585,965	123,744,155,912	-0.051		
Sep-05	21	3,009,640,645,370	143,316,221,208	0.147		
Oct-05	21	3,279,847,331,057	156,183,206,241	0.086		
Nov-05	21	3,163,453,821,548	150,640,658,169	-0.036		
Dec-05	21	3,090,212,715,561	147,152,986,455	-0.023		
Jan-06	20	3,573,372,724,766	178,668,636,238	0.194		

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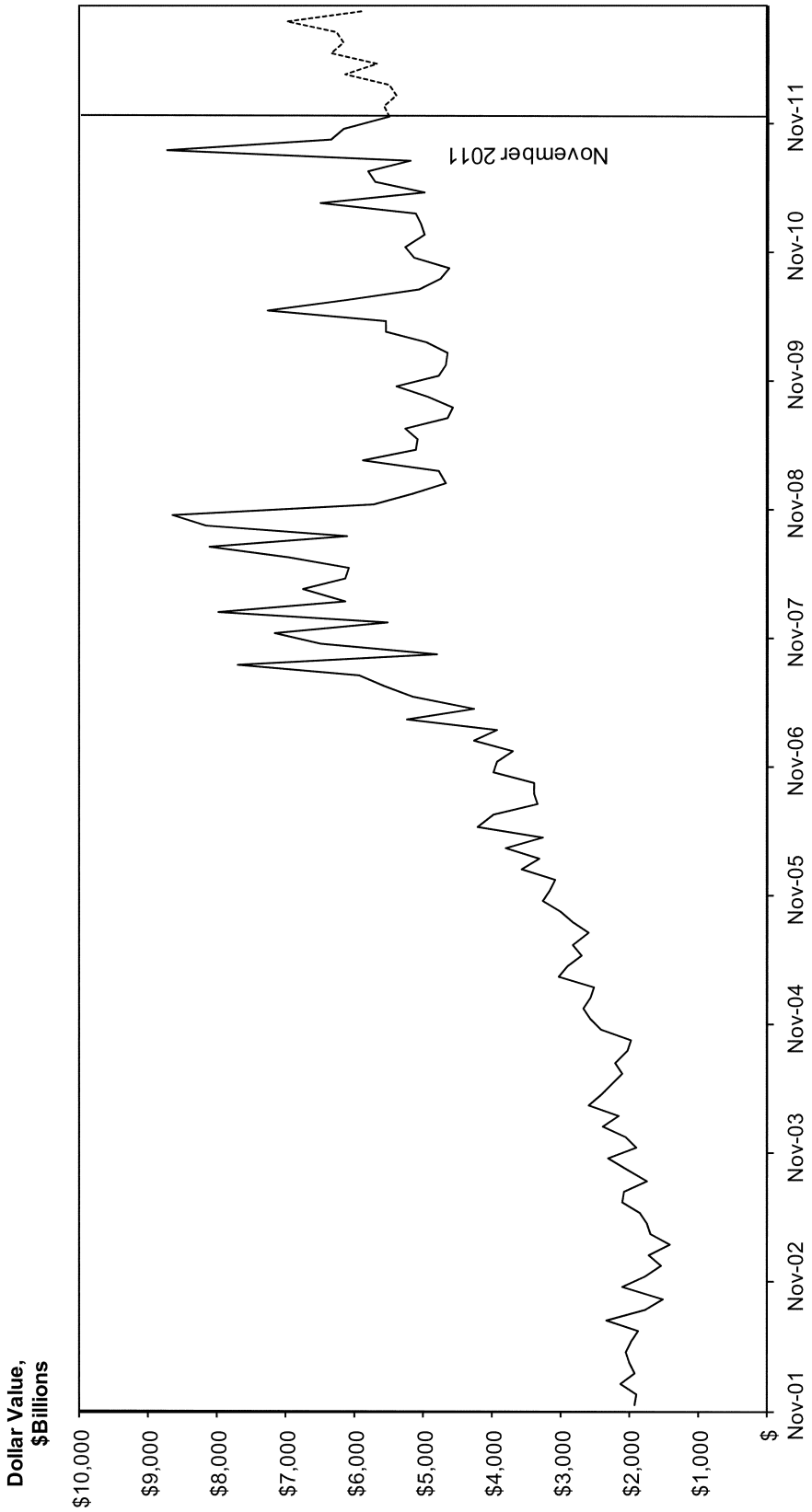
Feb-06	19	3,314,259,849,456	174,434,728,919	-0.024		
Mar-06	23	3,807,974,821,564	165,564,122,677	-0.052		
Apr-06	19	3,257,478,138,851	171,446,217,834	0.035		
May-06	22	4,206,447,844,451	191,202,174,748	0.109		
Jun-06	22	3,995,113,357,316	181,596,061,696	-0.052		
Jul-06	20	3,339,658,009,357	166,982,900,468	-0.084		
Aug-06	23	3,410,187,280,845	148,269,012,211	-0.119		
Sep-06	20	3,407,409,863,673	170,370,493,184	0.139		
Oct-06	22	3,980,070,216,912	180,912,282,587	0.060		
Nov-06	21	3,933,474,986,969	187,308,332,713	0.035		
Dec-06	20	3,715,146,848,695	185,757,342,435	-0.008		
Jan-07	20	4,263,986,570,973	213,199,328,549	0.138		
Feb-07	19	3,946,799,860,532	207,726,308,449	-0.026		
Mar-07	22	5,245,051,744,090	238,411,442,913	0.138		
Apr-07	20	4,274,665,072,437	213,733,253,622	-0.109		
May-07	22	5,172,568,357,522	235,116,743,524	0.095		
Jun-07	21	5,586,337,010,802	266,016,048,133	0.123		
Jul-07	21	5,938,330,480,139	282,777,641,911	0.061		
Aug-07	23	7,713,644,229,032	335,375,836,045	0.171		
Sep-07	19	4,805,676,596,099	252,930,347,163	-0.282		
Oct-07	23	6,499,651,716,225	282,593,552,879	0.111		
Nov-07	21	7,176,290,763,989	341,728,131,619	0.190		
Dec-07	20	5,512,903,594,564	275,645,179,728	-0.215		
Jan-08	21	7,997,242,071,529	380,821,051,025	0.323		
Feb-08	20	6,139,080,448,887	306,954,022,444	-0.216		
Mar-08	20	6,767,852,332,381	338,392,616,619	0.098		
Apr-08	22	6,150,017,772,735	279,546,262,397	-0.191		
May-08	21	6,080,169,766,807	289,531,893,657	0.035		
Jun-08	21	6,962,199,302,412	331,533,300,115	0.135		
Jul-08	22	8,104,256,787,805	368,375,308,537	0.105		
Aug-08	21	6,106,057,711,009	290,764,652,905	-0.237		
Sep-08	21	8,156,991,919,103	388,428,186,624	0.290		
Oct-08	23	8,644,538,213,244	375,849,487,532	-0.033		
Nov-08	19	5,727,998,341,833	301,473,596,939	-0.221		
Dec-08	22	5,176,041,317,640	235,274,605,347	-0.248		
Jan-09	20	4,670,249,433,806	233,512,471,690	-0.008		
Feb-09	19	4,771,470,184,048	251,130,009,687	0.073		
Mar-09	22	5,885,594,284,780	267,527,012,945	0.063		
Apr-09	21	5,123,665,205,517	243,984,057,406	-0.092		
May-09	20	5,086,717,129,965	254,335,856,498	0.042		
Jun-09	22	5,271,742,782,609	239,624,671,937	-0.060		
Jul-09	22	4,659,599,245,583	211,799,965,708	-0.123		
Aug-09	21	4,582,102,295,783	218,195,347,418	0.030		
Sep-09	21	4,929,155,364,888	234,721,684,042	0.073		
Oct-09	22	5,410,025,301,030	245,910,240,956	0.047		
Nov-09	20	4,770,928,103,032	238,546,405,152	-0.030		
Dec-09	22	4,688,555,303,171	213,116,150,144	-0.113		
Jan-10	19	4,661,793,708,648	245,357,563,613	0.141		
Feb-10	19	4,969,848,578,023	261,570,977,791	0.064		
Mar-10	23	5,563,529,823,621	241,892,601,027	-0.078		
Apr-10	21	5,546,445,874,917	264,116,470,234	0.088		
May-10	20	7,260,430,376,294	363,021,518,815	0.318		
Jun-10	22	6,124,776,349,285	278,398,924,967	-0.265		
Jul-10	21	5,058,242,097,334	240,868,671,302	-0.145		

Aug-10	22	4,765,828,263,463	216,628,557,430	-0.106		
Sep-10	21	4,640,722,344,586	220,986,778,314	0.020		
Oct-10	21	5,138,411,712,272	244,686,272,013	0.102		
Nov-10	21	5,279,700,881,901	251,414,327,710	0.027		
Dec-10	22	4,998,574,681,208	227,207,940,055	-0.101		
Jan-11	20	5,043,391,121,345	252,169,556,067	0.104		
Feb-11	19	5,114,631,590,581	269,191,136,346	0.065		
Mar-11	23	6,499,355,385,307	282,580,668,926	0.049		
Apr-11	20	4,975,954,868,765	248,797,743,438	-0.127		
May-11	21	5,717,905,621,053	272,281,220,050	0.090		
Jun-11	22	5,820,079,494,414	264,549,067,928	-0.029		
Jul-11	20	5,189,681,899,635	259,484,094,982	-0.019		
Aug-11	23	8,720,566,877,109	379,155,081,613	0.379		
Sep-11	21	6,343,578,147,811	302,075,149,896	-0.227		
Oct-11	21	6,163,272,963,688	293,489,188,747	-0.029		
Nov-11	21	5,493,906,473,584	261,614,593,980	-0.115		
Dec-11	21				265,994,342,797	5,585,881,198,747
Jan-12	20				270,447,413,976	5,408,948,279,516
Feb-12	20				274,975,035,021	5,499,500,700,425
Mar-12	22				279,578,453,990	6,150,725,987,779
Apr-12	20				284,258,939,832	5,685,178,796,640
May-12	22				289,017,782,741	6,358,391,220,309
Jun-12	21				293,856,294,511	6,170,982,184,735
Jul-12	21				298,775,808,896	6,274,291,986,814
Aug-12	23				303,777,681,979	6,986,886,685,506
Sep-12	19				308,863,292,545	5,868,402,558,346

Figure A.
Aggregate Dollar Amount of Sales Subject to Exchange Act Sections 31(b) and 31(c)[1]
Methodology Developed in Consultation With OMB and CBO
(Dashed Line Indicates Forecast Values)



[1]Forecasted line is not smooth because the number of trading days varies by month.

[FR Doc. 2012–1522 Filed 1–24–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66187; File No. SR–BYX–2012–002]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews

January 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program related to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, is currently operating as a pilot program set to expire on January 31, 2012.[3] The Exchange proposes to extend the pilot program to July 31, 2012.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national security exchange was pending approval. Such changes included changes to the Exchange's Rule 11.17, on a pilot basis, to provide for uniform treatment: (1) Of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[4] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest.

[3] *See* Securities Exchange Act Release No. 65077 (August 9, 2011), 76 FR 50795 (August 16, 2011) (SR–BYX–2011–017).

[4] *See* Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b-4(f)(6)[12] normally does not

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[14]

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 No. SR–BYX–2012–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2012–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2012–002 and should be submitted on or before February 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1483 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66188; File No. SR–BATS–2012–002]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to Clearly Erroneous Execution Reviews

January 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.17, entitled ''Clearly Erroneous Executions.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions, Rule 11.17. The rule, explained in further detail below, is currently operating as a pilot program set to expire on January 31, 2012.[3] The Exchange proposes to extend the pilot program to July 31, 2012.

On September 10, 2010, the Commission approved, on a pilot basis, changes to BATS Rule 11.17 to provide for uniform treatment: (1) of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (2) in the event transactions occur that result in the issuance of an individual stock trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65113 (August 11, 2011), 76 FR 51089 (August 17, 2011) (SR–BATS–2011–028).

the Exchange.[4] The Exchange also adopted additional changes to Rule 11.17 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.17.[5] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. More specifically, the Exchange believes that the extension of the pilot would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of 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 imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

[4] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–BATS–2010–016).

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6)[12] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change as operative upon filing.[14]

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.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–BATS–2012–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2012–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–002 and should be submitted on or before February 15, 2012.

[15] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1484 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66189; File No. SR–BYX–2012–001]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Pilot Program Related To Trading Pauses Due to Extraordinary Market Volatility

January 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program related to Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, is currently operating as a pilot program set to expire on January 31, 2012. The Exchange proposes to extend the pilot program to July 31, 2012.

On October 4, 2010, the Exchange filed an immediately effective filing to adopt various rule changes to bring BYX Rules up to date with the changes that had been made to the rules of BATS Exchange, Inc., the Exchange's affiliate, while BYX's Form 1 Application to register as a national securities exchange was pending approval. Such changes included changes to the Exchange's Rule 11.18, on a pilot basis, to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index, the Russell 1000® Index and specified Exchange Traded Products that experience rapid price movement.[3] More recently, the Exchange proposed expansion of the pilot program to apply to all NMS stocks.[4] This expansion was approved on June 23, 2011.[5] The pilot program relating to trading pause standards has been extended three times since its inception.[6]

The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act[9] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the pilot program is working well, that it has been infrequently invoked during the previous months, and that the extension of the pilot program will allow the Exchange to further assess the effect of the pilot program on the market or whether other initiatives should be adopted in lieu of the current pilot program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) (SR–BYX–2010–002).

[4] Securities Exchange Act Release No. 64433 (May 6, 2011), 76 FR 27680 (May 12, 2011) (SR–BYX–2011–011).

[5] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex-2011–32; SR–NYSEArca-2011–26; SR–NSX–2011–06; SR–Phlx-2011–64).

[6] Securities Exchange Act Release No. 63513 (December 9, 2010), 75 FR 78784 (December 16, 2010) (SR–BYX–2010–007); Securities Exchange Act Release No. 64214 (April 6, 2011), 76 FR 20430 (April 12, 2011) (SR–BYX–2011–007); Securities Exchange Act Release No. 65082 (August 9, 2011), 76 FR 50800 (August 16, 2011) (SR–BYX–2011–018).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[16]

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 No. SR–BYX–2012–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BYX–2012–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2012–001 and should be submitted on or before February 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66193; File No. SR–ODD–2012–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of Accelerated Delivery of Supplement to the Options Disclosure Document Reflecting Certain Changes to Disclosure Regarding Relative Performance Options

January 19, 2012.

On August 15, 2011, The Options Clearing Corporation (''OCC'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 (''Act''),[1] five preliminary copies of a supplement to amend the options disclosure document (''ODD'') to reflect certain changes to disclosure regarding relative performance options (''January 2012 Supplement'').[2] On January 5, 2012, the OCC submitted to the Commission five definitive copies of the January 2012 Supplement.[3]

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. The March 2011 Supplement amended the ODD to provide disclosure regarding relative performance options in response to the Commission's approval of NASDAQ OMX PHLX LLC's (''Phlx'') proposal to list and trade Alpha Index options.[4] In August 2011, the Commission approved a proposed rule change that permitted Phlx to list and trade certain Alpha Index options where both components of the Alpha Index are ETF shares.[5] The current proposed January 2012 Supplement amends the ODD disclosure to accommodate the listing of relative performance options where both components of the

[1] 17 CFR 240.9b–1.

[2] *See* letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division of Trading and Markets (''Division''), Commission, dated August 15, 2011.

[3] *See* letter from Jean M. Cawley, Senior Vice President, Deputy General Counsel and Chief Compliance Officer, OCC, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated January 5, 2012.

[4] *See* Securities Exchange Act Release No. 63860 (February 7, 2011), 76 FR 7888 (February 11, 2011) (SR–Phlx–2010–176) (order approving Phlx's proposed rule change to list and trade Alpha Index options).

[5] *See* Securities Exchange Act Release No. 65149 (August 17, 2011), 76 FR 52729 (August 23, 2011) (SR–Phlx–2011–89) (order approving Phlx's proposed rule change to list and trade Alpha Index options where both Alpha Index components are ETF shares).

underlying relative performance index could be an ETF share. The supplement also clarifies that the ETF share components must be non-leveraged. In addition, the supplement proposes to add an example of the calculation of a relative performance index. The proposed supplement is intended to be read in conjunction with the more general ODD, which discusses the characteristics and risks of options generally.[6]

Rule 9b–1(b)(2)(i) under the Act[7] provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of the information disclosed and the public interest and protection of investors.[8] In addition, five copies of the definitive ODD, as amended or supplemented, must be filed with the Commission not later than the date the amendment or supplement, or the amended ODD, is furnished to customers. The Commission has reviewed the proposed January 2012 Supplement, and the amendments to the ODD contained therein, and finds that, having due regard to the adequacy of the information disclosed and the public interest and protection of investors, the supplement may be furnished to customers as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[9] that definitive copies of the January 2012 Supplement to the ODD (SR–ODD–2012–01), reflecting changes to disclosure regarding relative performance options, may be furnished to customers as of the date of this order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1445 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

[6] The Commission notes that the options markets must continue to ensure that the ODD is in compliance with the requirements of Rule 9b–1(b)(2)(i) under the Act, 17 CFR 240.9b–1(b)(2)(i), including when changes regarding relative performance options are made in the future. Any future changes to the rules of the options markets concerning relative performance options would need to be submitted to the Commission under Section 19(b) of the Act. 15 U.S.C. 78s(b).

[7] 17 CFR 240.9b–1(b)(2)(i).

[8] This provision permits the Commission to shorten or lengthen the period of time which must elapse before definitive copies may be furnished to customers.

[9] 17 CFR 240.9b–1.

[10] 17 CFR 200.30–3(a)(39).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66192; File No. SR–NYSEArca–2012–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Amendments to NYSE Arca Rule 9.4 and NYSE Equities Inc. Rules 5.3(d) and 9.4 Relating to Discretionary Proxy Voting on Executive Compensation Matters and Election of Directors To Comply With the Dodd-Frank Act

January 19, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 5, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Rule 9.4 and to adopt Commentary .01 to NYSE Arca Rule 9.4 and, through its wholly-owned corporation, NYSE Arca Equities, Inc. (''NYSE Arca Equities''), proposes to amend NYSE Arca Equities Rule 5.3(d) and NYSE Arca Equities Rule 9.4 and to adopt Commentary .01 to NYSE Arca Equities Rule 9.4. These amendments are being made to comply with the requirements of the Dodd-Frank Act with respect to the broker voting rules of national securities exchanges. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') adopted new Section 6(b)(10)[4] of the Securities Exchange Act (the ''Exchange Act'').[5] This new provision requires all national securities exchanges to adopt rules that prohibit their members from voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the member receives voting instructions from the beneficial owner of the shares.

NYSE Arca Rule 9.4 governs when OTP Holders and OTP Firms may vote shares held for customers and NYSE Arca Equities Rule 9.4 governs when ETP Holders may votes[sic] shares held for customers. NYSE Arca Rule 9.4 prohibits OTP Holders and OTP Firms, and NYSE Arca Equities Rule 9.4 prohibits ETP Holders, from voting any uninstructed shares, but also permits the OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) to follow the rules of another national securities exchange instead. In addition to its general requirements with respect to voting of uninstructed shares by ETP Holders, NYSE Arca Equities Rule 9.4 specifically prohibits ETP Holders from voting uninstructed shares on any proposal with respect to the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by NYSE Arca Equities Rule 5.3(d)(1)–(7)), unless the beneficial owner of the shares has given voting instructions.

In order to assure compliance, in all cases, with newly adopted Section

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78f(b)(10).

[5] 15 U.S.C. 78a.

6(b)(10), NYSE Arca proposes to add Commentaries (each titled ''*Proxies Voting''*) to each of NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to provide that in no event could an OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) vote uninstructed shares on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless instructed by the beneficial owner of the shares.

NYSE Arca also proposes to amend NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to provide that an OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) may only follow the rules of another SRO in voting shares if, in doing so, its records clearly indicate the procedures it is following.

NYSE Arca proposes to amend NYSE Arca Equities Rule 9.4 to delete the specific prohibition in that rule with respect to ETP Holders voting uninstructed shares on any proposal with respect to the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan (whether or not stockholder approval of such plan is required by NYSE Arca Equities Rule 5.3(d)(1)–(7)), unless the beneficial owner of the shares has given voting instructions. NYSE Arca is proposing to delete this text because the Exchange believes it is no longer necessary, as NYSE Arca Equities Rule 9.4 generally prohibits ETP Holders from voting shares held on behalf of a beneficial owner except pursuant to the instructions of such beneficial holder and proposed Commentary .01 to NYSE Arca Equities Rule 9.4 would specifically prohibit ETP Holders from voting without such instructions on any proposal relating to executive compensation, or any other significant matter, as determined by the SEC, by rule. Subparagraph (7) of NYSE Arca Equities Rule 5.3(d) is currently a cross-reference to the prohibition of NYSE Arca Equities Rule 9.4 on voting uninstructed shares on equity compensation matters and it will be rendered moot by the elimination of that aspect of NYSE Arca Equities Rule 9.4. Consequently, NYSE Arca proposes to amend this provision so that it will be a cross-reference to the voting restrictions of NYSE Arca Equities Rule 9.4 generally.

NYSE Arca is also proposing to make several other minor changes to the applicable rules. First, NYSE Arca proposes to add the words ''or authorize'' or ''or authorizing'' in certain places in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to clarify that the rules cover not only the giving of a proxy but also the authorization of such proxy. Second, NYSE Arca proposes to amend references to ''actual'' owners in certain places in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 so that they will now refer to ''beneficial'' owners, as this is the term used in the federal securities laws and Commission rules. Third, NYSE Arca proposes to amend NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to modify the language which currently states that an OTP Holder or OTP Firm or ETP holder, as applicable, may vote shares when permitted to do so pursuant to the rules of another national securities exchange to which he or his firm ''is responsible'' As a clarification, NYSE Arca proposes to amend this language so that it will state that an OTP Holder or OTP Firm or ETP holder, as applicable, may vote shares when permitted to do so pursuant to the rules of another national securities exchange of which he or his firm is a member. Finally, NYSE Arca proposes to amend this same sentence in both NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to add the words ''or association'' after the phrase ''national securities exchange,'' as an OTP Holder, OTP Member or ETP Holder may be a member of a national securities association (e.g., FINRA) whose rules contain appropriate restrictions on its members' ability to vote uninstructed shares (as is the case with FINRA Rule 2251).

2. Statutory Basis

NYSE Arca believes that the proposed rule change is consistent with the provisions of Section 6 of the Exchange Act,[6] in general and with Section 6(b)(10)[7] of the Exchange Act, in particular. Specifically, NYSE Arca believes the proposed rule change is consistent with the requirements of Section 6(b)(10) that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that the proposed rule change is consistent with the requirements under Section 6(b)(5)[8] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange is adopting this proposed rule change to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Exchange Act, particularly with respect to the protection of investors and the public interest. NYSE Arca believes that the proposed amendment to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to provide that an OTP Holder or OTP Firm (in the case of NYSE Arca Rule 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4) may only follow the rules of another SRO in voting shares if, in doing so, its records clearly indicate the procedures it is following, is consistent with the requirements under Section 6(b)(5) in that it will protect investors by requiring brokers to maintain adequate records when they vote uninstructed shares.

NYSE Arca believes that the proposed amendment to NYSE Arca Equities Rule 9.4 to delete the specific prohibition in that rule with respect to ETP Holders voting uninstructed shares on any equity compensation proposal is consistent with the requirements under Section 6(b)(5) in that NYSE Arca Equities Rule 9.4 generally prohibits ETP Holders from voting shares held on behalf of a beneficial owner except pursuant to the instructions of such beneficial holder and proposed Commentary .01 to NYSE Arca Equities Rule 9.4 would specifically prohibit ETP Holders from voting without such instructions on any proposal relating to executive compensation, or any other significant matter, as determined by the Commission, NYSE Arca also believes that the proposed amendment is consistent with the requirements under Section 6(b)(10) in that the specific prohibitions required by Section 957 of the Dodd-Frank Act will be included in NYSE Arca Equities Rule 9.4 as amended.

NYSE Arca believes that the following proposed minor amendments are

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(10).

[8] 15 U.S.C. 78f(b)(5).

consistent with the requirements under Section 6(b)(5) in that they are simply clarifications of the rule text without any substantive effect: (i) The proposed amendment to subparagraph (7) of NYSE Arca Equities Rule 5.3(d), which simply corrects a cross-reference to reflect the proposed amendment to NYSE Arca Equities Rule 9.4; (ii) the addition of the words ''or authorize'' or ''or authorizing'' in certain places in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4; (iii) the proposed replacement of references to ''actual'' owners in certain places in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 by references to ''beneficial'' owners; and (iv) the amendment to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to state that an OTP Holder or OTP Firm or ETP holder, as applicable, may vote shares when permitted to do so pursuant to the rules of another national securities exchange of which he or his firm is ''a member'' rather than one to which he or his firm ''is responsible.''

NYSE Arca believes that the proposed addition of the words ''or association'' after the phrase ''national securities exchange'' in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 is consistent with the requirements under Section 6(b)(5) in that it simply recognizes that national securities associations may have rules governing the voting of shares by their broker-dealer members (such as FINRA Rule 2251) comparable to those of national securities exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NYSEArca–2012–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–02 and should be submitted on or before February 15, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, NYSE Arca requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9]

The Commission believes that the proposal is consistent with Section 6(b)(10)[10] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5)[11] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that ''final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.''[12] The proposed rule change will make the Exchange compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in Commentary language to each NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4, OTP Holder or OTP Firm (in the case of NYSE Arca 9.4) or ETP Holder (in the case of NYSE Arca Equities Rule 9.4), who are not a beneficial owner of a security, from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the

[9] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(10).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* S. Rep. No. 111–176, at 136 (2010).

Commission by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.[13]

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by an OTP Holder, OTP Firm, or ETP holder that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[14]

In addition to incorporating the provisions of Section 6(b)(10), the Exchange proposes deleting from NYSE Arca Equities Rule 9.4 the specific prohibition in that rule with respect to ETP Holders voting uninstructed shares on any equity compensation proposal. The Commission believes that this provision is no longer necessary because NYSE Arca Equities Rule 9.4 generally prohibits ETP Holders from voting any uninstructed shares, including on equity compensation matters. The Commission further notes that the new proposed Commentary to NYSE Arca's Equities Rule 9.4 prohibiting uninstructed broker votes on executive compensation covers the specific items identified in Section 951 of the Dodd-Frank Act as well as any other matter concerning executive compensation, and has been drafted broadly to reflect the requirements of Section 6(b)(10) of the Act. The Commission also notes that to the extent NYSE Arca has any past practice or interpretation that may have permitted an ETP Holder to vote on certain equity compensation plans, under its existing rule, this will no longer be applicable and is superseded by the newly adopted provisions.

The Commission notes that NYSE Arca has proposed to amend NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to provide that OTP Holders, OTP Firms, or ETP Holders may only follow the rules of another self-regulatory organization in voting shares if its records clearly indicate the procedures it is following. The Commission believes that this will help to ensure that any broker voting that is permitted is pursuant to approved rules of another self-regulatory organization.

The Commission notes that the Exchange has also proposed to make certain clarifications to its rules, which include: amending subparagraph (7) of NYSE Arca Equities Rule 5.3(d) to cross-reference to NYSE Arca Equities Rule 9.4; replacing references to ''actual'' owners with ''beneficial'' owners in certain places in NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4; and amending NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 to state that an OTP Holder or OTP Firm or ETP Holder, as applicable, may vote shares when permitted to do so pursuant to the rules of another national securities exchange of which he or his firm is ''a member'' rather than one to which he or his firm ''is responsible.'' The Commission believes that these clarifications are technical in nature and should provide greater transparency in Exchange's rules and help avoid confusion.

The Commission further notes that the Exchange added ''or association'' to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 so that an OTP Holder, OTP Firm, or ETP Holder, as applicable, would be prohibited from giving a proxy to vote, unless pursuant to the rules of any national securities exchange or association of which it is a member. The Commission believes that this is appropriate since OTP Holders, OTP Firms, or ETP Holders are members of FINRA, a national securities association that also has restrictions on broker voting.[15] Finally, the Commission notes that the change to reflect that NYSE Arca rules prohibit not only the giving of a proxy, but also the authorization of the proxy, should help to clarify the intent of NYSE Arca proxy rules and is consistent with the requirements of Section 6 of the Act.

Based on the above, the Commission finds that the NYSE Arca proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform the Exchange's rules to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that the Exchange's proposed Commentaries to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 are identical to Nasdaq Rule 2251(d), which was previously approved by the Commission.[17] Finally, as noted above, the Exchange's proposed changes to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 are consistent with rules of other national securities exchanges, provide clarity and transparency in the Exchange's rules, and raise no new regulatory issues. Based on the above, the Commission believes the Exchange's proposed rule change raises no new regulatory issues, and therefore finds good cause to accelerate approval.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2012–02) be, and it hereby is, approved on an accelerated basis.

[13] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect NYSE Arca to adopt coordinating rules promptly to comply with the statute.

[14] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[15] *See* FINRA Rule 2251. In addition, the Commission notes that the addition of ''or association'' to NYSE Arca Rule 9.4 and NYSE Arca Equities Rule 9.4 is consistent with ISE Rule 421 and BATS–Y Exchange, Inc. Rule 13.3(b). *See* Securities Exchange Act Releases Nos. 63139 (October 20, 2010), 75 FR 65680 (October 26, 2011) (SR–ISE–2010–99) and 65448 (September 30, 2011), 76 FR 62103 (October 6, 2011) (SR–BYX–2011–024).

[16] 15 U.S.C. 78s(b)(2).

[17] *See* Securities Exchange Act Release No. 62992 (September 24, 2010), 75 FR 60844 (October 1, 2010) (SR–Nasdaq–2010–114).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1444 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66186; File No. SR–DTC–2011–09]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Modify a Practice in Order To Mitigate Systemic Risk, Specifically Liquidity Related, Associated With DTC End of Day Net Funds Settlement

January 19, 2012.

I. Introduction

On November 21, 2011, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–DTC–2011–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder. The proposed rule change was published for comment in the **Federal Register** on December 8, 2011.[3] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Pursuant to the rule change, DTC will temporarily reduce each Participant's maximum net debit cap for night cycle processing of valued transactions over weekends and holidays and to restore such debit cap at the start of day cycle processing for the next settlement date (*i.e.,* the first business day following the weekend or holiday). Under the proposed change, DTC would temporarily reduce each Participant's maximum net debit cap for night cycle processing[4] of valued transactions over weekends and holidays and would restore such debit cap at the start of day cycle processing for the next settlement date (*i.e.,* the first business day following the weekend or holiday). In doing so, DTC believes it would reduce the systemic risk associated with a liquidity shortfall and would enhance the safety and soundness of the U.S. settlement system.

Background on DTC Settlement and the Net Debit Cap Control

DTC's Settlement System is structured so that Participants may make intraday book-entry deliveries versus payment of securities held in their DTC accounts. These transfers generate debits to the settlement account of each receiving Participant and credits to the settlement account of each delivering Participant. As debits and credits of multiple transactions net over the course of the business day, a Participant will have either a net debit balance or net credit balance from time to time and at settlement will be in either a net debit or net credit balance position. Participants having a net debit balance for settlement owe payments of the amount of the net debit to DTC. In order that DTC has the resources to achieve end-of-day settlement among non-defaulting Participants, DTC maintains liquidity resources sufficient to complete settlement, notwithstanding the failure of its largest Participant to pay, by covering the net debit balance of a defaulting Participant. One of the key risk management controls in this process is the net debit cap, which limits the net debit balance of a Participant, intraday and at settlement, to DTC's available liquidity resources. (The net debit balance must also be fully collateralized by sufficient collateral measured by the collateral monitor risk control.) DTC assigns a net debit cap to each Participant based on the Participant's activity and currently limits the maximum net debit cap for a Participant to $1.8 billion and for a family of related Participants to $3 billion aggregate.[5] This settlement structure is designed to support the efficient recycling of intraday liquidity to facilitate the settlement of transactions while limiting systemic risk due to Participant failure.

With Friday night cycle processing over weekends and holidays, however, Participants may accrue net debit balances for end-of-day settlement on the next business day, which is two to three calendar days away. DTC has recognized that during such extended processing, external credit events may occur, including, in particular, the possibility of a weekend insolvency.

Change in Night Cycle Processing

To address the liquidity risk[6] over the extended periods of weekends and holidays, DTC is proposing to reduce the maximum net debit cap temporarily over the extended period for any Participant or any family of related Participants to $1.5 billion at the opening of night cycle processing on any DTC business day for which the succeeding calendar day is not a business day. DTC would then restore the net debit cap for any affected Participant or family of related Participants to its full net debit cap at the open of day cycle processing for the next business day in the ordinary course of business.[7]

Risk Reduction and Anticipated Minimal Settlement System and Participant Impact

The purpose of this proposed change in processing practice is to minimize systemic risk to U.S. markets and to DTC Participants as well as to minimize direct liquidity risk to DTC by the management of net debit balances over extended processing periods such as weekends and holidays.

The highest net debit caps at DTC are established primarily to support the settlement of Money Market Instrument (''MMI'') transactions. MMI transactions are high value, same day settling transactions that are processed principally in the afternoon on any settlement day. Because these transactions are processed during the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–65871 (December 2, 2011), 76 FR 76790 (December 8, 2011). In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements is incorporated into the discussion of the proposed rule change in Section II below.

[4] DTC processes settlement in two cycles each business day: (i) A night cycle that begins at approximately 9 p.m. and finishes at approximately 11:30 p.m. and (ii) a day cycle that begins at approximately 3 a.m. and completes at approximately 3:30 p.m. For Monday settlement, the night cycle begins on the preceding Friday evening at 9 p.m. and ends at 11:30 p.m. Friday night; the day cycle does not begin until 3 a.m. on Monday.

[5] These net debit caps are supported by $3.2 billion of liquidity resources at DTC in the form of a $1.3 billion all-cash Participants Fund and a $1.9 billion committed line of credit available for settlement in the event that a Participant fails to pay its net debit balance at settlement.

[6] ''Liquidity risk'' refers to the financial risk associated with access to liquidity to cover the failure of a Participant to fund its net settlement obligation to DTC.

[7] Today, DTC may reduce a Participant's net debit cap (*see, e.g.,* DTC Rule 1, definition of Net Debit Cap which permits DTC to set the Net Debit Cap of a Participant at ''any other amount determined by [DTC], in its sole discretion.''). Accordingly, after a temporary weekend or holiday reduction as proposed herein, DTC may elect not to restore the net debit cap of any affected Participant. By way of example only, and in line with the purpose of this proposed change in practice, DTC would not expect to restore the net debit cap of a Participant that had become insolvent in the intervening non-business days or as to which DTC is concerned with its credit status. (DTC would take the same approach to holidays, that is, whenever two business days are not successive.)

day cycle only, they should not be affected by the proposed modification to processing in the night-cycle for weekends and holidays.

In order to determine the potential effects of lowering the net debit caps for certain night cycle processing as proposed in this rule filing, DTC conducted a simulation study in which the maximum net debit cap for a Participant and for a Participant family was set at $1.5 billion. The study found that net debit cap related blockage increased by only 1.13% on average, which represents a gross value of approximately $913 million out of approximately $70 billion processed in each night cycle for settlement on the next business day. For Participants that might encounter transaction blockage, this blockage could be further minimized by the Participant by instructing deliveries versus payment that would generate credits to offset debits. Under the proposed revised practice, at the time net debit caps are restored for same-day settlement, any transactions that are pending due to the lower net debit cap would be reprocessed and would be completed at the start of the day cycle, assuming no other changes.[8] DTC recognizes that this change in practice may affect transaction management for certain Participants and has taken the initiative to discuss the proposal with all of those Participants and has received no objections. Certain Participants indicated that they would consider changes that could lessen the impact by implementing their own night cycle process improvements.

Accordingly, DTC believes that the proposed rule change would mitigate systemic risk due to the potential shortfall in liquidity associated with the net settlement failure of a Participant with only minimal impact on Participants and processing.

III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.[9] In particular, Section 17A(b)(3)(A)[10] of the Act requires, among other things, that the clearing agency be so organized and have the capacity to safeguard the securities and funds which are in the custody or control of such clearing agency or for which it is responsible.

Because the proposed change would allow DTC to enhance the risk management controls by temporarily reducing each Participant's and family of Participant's maximum net debit cap for night cycle processing of valued transactions over weekends and holidays and to restore such debit cap at the start of day cycle processing for the next settlement date, the Commission believes that the proposed rule change is consistent with DTC's safeguarding obligations under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)[11] of the Act, that the proposed rule change (File No. SR–DTC–2011–09) be, and hereby is, approved.[12]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2012–1378 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

[8] The Participants with increased blockage in the simulation often have large net debits in the night cycle because they do not send in Night Deliver Orders (''NDOs'') or they exempt or withhold from night cycle processing many or all of their Institutional Deliveries that would otherwise create credits.

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 15 U.S.C. 78q–1(b)(3)(A).

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66190; File No. SR–BATS–2012–001]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Pilot Program Related to Trading Pauses Due to Extraordinary Market Volatility

January 19, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2012, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to extend a pilot program previously approved by the Commission related to Rule 11.18, entitled ''Trading Halts Due to Extraordinary Market Volatility.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's rule related to individual stock circuit breakers, which is contained in Rule 11.18(d) and Interpretation and Policy .05 to Rule 11.18. The rule, explained in further detail below, is currently operating as a pilot program set to expire on January 31, 2012. The Exchange proposes to extend the pilot program to July 31, 2012.

On June 10, 2010, the Commission approved on a pilot basis changes to BATS Rule 11.18 to provide for uniform market-wide trading pause standards for individual securities in the S&P 500® Index that experience rapid price movement.[3] Later, the Exchange and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–BATS–2010–014).

other markets proposed extension of the trading pause standards on a pilot basis to individual securities in the Russell 1000® Index and specified Exchange Traded Products, which changes the Commission approved on September 10, 2010.[4] More recently, the Exchange proposed expansion of the pilot program to apply to all NMS stocks.[5] This expansion was approved on June 23, 2011.[6] The pilot program relating to trading pause standards has been extended three times since its inception.[7]

The Exchange believes the benefits to market participants from the individual stock trading pause rule should be continued on a pilot basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[8] In particular, the proposal is consistent with Section 6(b)(5) of the Act,[9] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The proposed rule change is also consistent with Section 11A(a)(1) of the Act [10] in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the pilot program promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the pilot program is working well, that it has been infrequently invoked during the previous months, and that the extension of the pilot program will allow the Exchange to further assess the effect of the pilot program on the market or whether other initiatives should be adopted in lieu of the current pilot program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6)(iii) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the pilot program to continue uninterrupted, thereby avoiding the investor confusion that could result from a temporary interruption in the pilot program. For this reason, the Commission designates the proposed rule change to be operative upon filing.[17]

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 No. SR–BATS–2012–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2012–001. 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

[4] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–BATS–2010–018).

[5] Securities Exchange Act Release No. 64435 (May 6, 2011), 76 FR 27684 (May 12, 2011) (SR–BATS–2011–016).

[6] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; SR–Phlx2011–64).

[7] Securities Exchange Act Release No. 63497 (December 9, 2010), 75 FR 78315 (December 15, 2010) (SR–BATS–2010–037); Securities Exchange Act Release No. 64207 (April 6, 2011), 76 FR 20424 (April 12, 2011) (SR–BATS–2011–011); Securities Exchange Act Release No. 65081 (August 9, 2011), 76 FR 50798 (August 16, 2011) (SR–BATS–2011–027).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2012–001 and should be submitted on or before February 15, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1486 Filed 1–24–12; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2011–0105]

Public Availability of Social Security Administration Fiscal Year (FY) 2011 Service Contract Inventory

AGENCY: Social Security Administration.

ACTION: Notice of Public Availability of FY 2011 Service Contract Inventories.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), we are publishing this notice to advise the public of the availability of the FY 2011 Service Contract inventory. This inventory provides information on FY 2011 service contract actions over $25,000. We organized the information by function to show how we distribute contracted resources throughout the agency. We developed the inventory in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf*. You can access the inventory and summary of the inventory on our homepage at the following link: *http://www.socialsecurity.gov/sci*.

FOR FURTHER INFORMATION CONTACT: Dennis Wilhite, Director, Office of Budget Execution and Automation, Office of Budget, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401. Phone (410) 966–6988, email *Dennis.Wilhite@ssa.gov*.

Michael G. Gallagher,

Deputy Commissioner for Budget, Finance and Management.

[FR Doc. 2012–1561 Filed 1–24–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

DEPARTMENT OF THE ARMY

Corps of Engineers

Supplemental Environmental Impact Statement, Mingo County, WV

AGENCY: Federal Highway Administration (FHWA), DOT. U.S. Army Corps of Engineers (USACE), DoD.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Federal Highway Administration (FHWA) and the United States Department of the Army Corps of Engineers (USACE) in cooperation with the West Virginia Division of Highways (WVDOH) will prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate the impacts of the proposed Delbarton to Belo portion of the King Coal Highway 2000 FEIS and the Buffalo Mountain Surface Mine *Clean Water Act* Section 404 Permit Application. The FHWA and USACE are joint-lead federal agencies on this project and are evaluating federal actions. FHWA is evaluating a location shift of a portion of the alignment between the West Virginia towns of Delbarton and Belo described in the 2000 FEIS and approved in the 2000 ROD. The USACE is evaluating a *Clean Water Act* (CWA) Section 404 Individual Permit (IP) application submitted by Consol of Kentucky, Inc. (CONSOL), for the discharge of fill material into waters of the United States (U.S.) in conjunction with the construction and operation of the Buffalo Mountain Surface Mine.

DATES: To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and suggestions concerning the proposed action and the SEIS should be submitted to FHWA, the USACE or WVDOH (*www.transportation.wv.gov*) at the address below within 30 days to ensure timely consideration.

FOR FURTHER INFORMATION CONTACT: Thomas Smith, Division Administrator, Federal Highway Administration, 700 Washington Street E., Charleston, WV 25301; telephone: (304) 347–5928; email: *Thomas.Smith@dot.gov.* Ginger Mullins, Chief, Regulatory Branch, U.S. Army Corps of Engineers, 502 Eighth Street, Huntington, WV 25701–2070; telephone: (304) 399–5610; email: *ginger.mullins@usace.army.mil.* Greg E. Bailey, P.E., Director Engineering Division, WVDOH, State Capitol Complex, Building 5, 1900 Kanawha Boulevard, East, Charleston, WV 26305; telephone: (304) 558–9722; email: *Gregory.L.Bailey@wv.gov.*

SUPPLEMENTARY INFORMATION:

1. Description of the Proposed Action—CONSOL proposes to extract coal within the vicinity of Delbarton and Belo for the proposed Buffalo Mountain Surface Mine. The construction and operation of the Buffalo Mountain Surface Mine will require the discharge of fill material into waters of the U.S.; therefore, CONSOL is required to obtain a CWA Section 404 IP. In 2008, CONSOL submitted an application for a CWA Section 404 IP, and the USACE issued Public Notice 2008–491 on December 3, 2008. The USACE is currently processing the Department of Army (DA) permit application (LRH–2008–491–TUG).

The King Coal Highway is a series of transportation improvements stretching for 94 miles in southern West Virginia. The approximate length of the Delbarton to Belo portion of the project is 7 miles. The King Coal Highway is also part of the I–73/74 National Highway System (NHS) Corridor. A Final Environmental Impact Statement (FEIS) for the entire King Coal Highway was approved by FHWA in June 2000 and a Record of Decision (ROD) was issued on August 24, 2000. Sections of the overall project are complete and open to traffic and a few others are currently under construction. Due to the limited availability of federal and state funding for the King Coal Highway, however, much of the highway alignment has not been constructed.

Since the issuance of the ROD, an opportunity for a joint development initiative was identified during CONSOL's development of a plan to

extract mineable coal reserves between the towns of Delbarton and Belo, Mingo County, West Virginia. A joint development initiative would incorporate the approved highway project into the post-mining land use plan of CONSOL's proposed Buffalo Mountain Surface Mine, and it would allow future highway construction to occur on land disturbed by a surface mine operation. In addition, the opportunity to combine the adjacent King Coal Highway and the Buffalo Mountain Surface Mine project areas would limit the resource impacts from each project to one location as well as minimize highway construction costs. The joint development initiative requires the portion of the King Coal Highway Corridor between Delbarton and Belo to be shifted eastward beyond the previously approved corridor alignment, and requires the WVDOH and FHWA to re-evaluate the June 2000 King Coal Highway EIS.

The SEIS will review information from the King Coal Highway FEIS/ROD, incorporate new information, update the impacts analysis, and assess impacts not previously evaluated in the FEIS/ROD. To streamline federal processes, the SEIS will also include the USACE's NEPA evaluation of DA permit application LRH–2008–491–TUG.

2. Alternatives—Alternatives available to FHWA for the proposed project are the no-build alternative, highway construction on new alignment within the Original King Coal Highway Corridor (i.e., the selected alternative from the 2000 ROD), or a joint development initiative (i.e., construction of a new highway alignment within the Buffalo Mountain Surface Mine).

Alternatives available to the USACE for the proposed project are issue the permit, issue the permit with special conditions, or deny the permit.

3. Scoping and Review Process –Throughout the course of the project, scoping and public involvement efforts for the original King Coal Highway Project have included: (1) A formal scoping meeting on September 16, 1999; (2) agency resource meetings for the King Coal Highway Project on October 13, 1995, and January 29, 1997; and, (3) public information workshops/public hearings on November 9, 1992, November 10, 1992, November 17, 1992, November 24, 1992, May 18, 1998, May 20, 1998, May 27, 1998, February 28, 2000, February 29, 2000, March 2, 2000, March 13, 2000, March 14, 2000, and March 16, 2000.

There have also been several public outreach activities associated with the Buffalo Mountain Surface Mine. These include multiple meetings with the Pigeon Creek Watershed Association between January 2007 and April 2008, a meeting with officials from the Town of Delbarton in October 2008, and agency coordination meetings with the USACE, U.S. Environmental Protection Agency (USEPA), FHWA, and West Virginia Department of Environmental Protection (WVDEP) between June 2008 and February 2010. In addition, information on the joint development initiative was presented at public meetings on December 11, 2008, and November 17, 2011.

Agency and public scoping meetings will be held during the development of the SEIS. The public scoping meeting will be announced a minimum of 15 days in advance of the meeting. The WVDOH will provide information for the public meeting, including date, time and location, on their Web site and by newspaper advertisement. The USACE will issuance the public meeting information via Public Notice.

4. Significant Issues—Based on preliminary information, the issues to be analyzed in the SEIS are likely to include, but are not limited to, the effects to surface water and groundwater resources, including aquatic habitat, water quantity and quality; wetlands; effects on the immediate and adjacent property owners and nearby communities; downstream hydraulics and hydrology; geologic resources; vegetation and forestland; fish and wildlife; threatened and endangered species; socioeconomics; land use; transportation impacts; and cumulative and secondary effects.

5. Additional Review and Consultation—The SEIS will comply with other Federal and State requirements including, but not limited to, the *Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users* (SAFETEA–LU); State water quality certification under Section 401 of the CWA; protection of water quality under the *West Virginia/National Pollutant Discharge Elimination System;* protection of air quality under the *West Virginia Air Pollution Control Act;* protection of endangered and threatened species under Section 7 of the *Endangered Species Act;* and protection of cultural resources under Section 106 of the *National Historic Preservation Act.*

6. Availability of the Draft SEIS—A Draft SEIS will be available for public review and comment. Individuals interested in obtaining a copy of the Draft SEIS for review should contact either the FHWA or USACE. Comments will also be accepted through the WVDOH Web site at the URL provided above.

Authority: 23 U.S.C. 315; 49 CFR 1.48; 33 CFR Part 325.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 18, 2012.

Thomas J. Smith,

Division Administrator, Federal Highway Administration, Charleston, West Virginia.

Robert D. Peterson,

Colonel, Corps of Engineers, Commanding.

[FR Doc. 2012–1495 Filed 1–24–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–001–N–16]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on November 16, 2011 (76 FR 221).

DATES: Comments must be submitted on or before February 24, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Janet Wylie, Office of Planning and Administration, RPD–3, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590 (telephone: (202) 493–6353), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 16, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comments on an ICR that the agency was seeking OMB approval. 76 FR 221. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Railroad Rehabilitation and Improvement Financing Program.

OMB Control Number: 2130–0548.

Type of Request: Revision of a currently approved collection.

Affected Public: State and local governments, government sponsored authorities and corporations, railroads, and joint ventures that include at least one railroad.

Abstract: Title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (Act), 45 U.S.C. 821 *et seq.,* authorized the Federal Railroad Administration (FRA) to provide railroads financial assistance through the purchase of preference shares, and the issuance of loan guarantees. This program is referred to as the Railroad Rehabilitation and Improvement Financing (''RRIF Program''). Under the RRIF program, direct loans and loan guarantees may be provided to State and local governments, certain interstate compacts, government sponsored authorities and corporations, railroads, joint ventures that include at least one railroad, and solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.

Form Number(s): FRA F–216, RRIF Program Loan Application and FRA F–217, Categorical Exclusion Worksheet.

Annual Estimated Burden Hours: 29,539.4 hours.

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira_submissions@omb.eop.gov*.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on January 18, 2012.

Rebecca Pennington,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2012–1372 Filed 1–24–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2010–0009]

Notice of Availability of Proposed New Starts/Small Starts Policy Guidance

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces the availability of the Federal Transit Administration's (FTA) Proposed Policy Guidance on New Starts/Small Starts and requests your comments on it. This document compliments the Notice of Proposed Rulemaking for Major Capital Investment Projects by describing the detailed measures proposed for evaluation of projects seeking New Starts and Small Starts funding and the way these measures would be used in project ratings if adopted. The proposed regulations and appendix are intended to act as a framework for the project evaluation and rating process, and the proposed policy guidance fills in the details.

DATES: Comments must be received on or before March 26, 2012. Late filed comments will be considered to the extent practicable.

ADDRESSES: *Comments:* You may submit comments identified by docket number (FTA–2010–0009) by any of the following methods:

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

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and the docket number (FTA–2010–0009) or the Regulatory Identification Number (2132–AB02) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov,* where they will be available to internet users. *Please see,* the Privacy Act.

You must submit two copies if your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

FOR FURTHER INFORMATION CONTACT: For program matters, Elizabeth Day, Office of Planning and Environment, (202) 366–5159 or *Elizabeth.Day@dot.gov*. For legal matters, Christopher VanWyk, (202) 366–1733 or *Christopher.VanWyk@dot.gov.*

SUPPLEMENTARY INFORMATION: As described in the notice of proposed rulemaking to amend the regulation under which the Federal Transit Administration evaluates and rates major new transit investments seeking funding under the discretionary ''New Start'' and ''Small Starts'' program authorized by Section 5309 of Title 49, U.S. Code, FTA is making available this proposed policy guidance for public comment. Section 5309(d)(6) of Title 49, U.S. Code, requires the FTA to publish policy guidance regarding the major capital investment program review and evaluation process and criteria each time significant changes are made, but not less frequently than once every two years. Further, the law requires FTA to invite and respond to public comment on proposed policy guidance. FTA invites comments on the proposed policy guidance, which is available in the docket (under the docket number provided above) and on FTA's public Web site.

Issued on: January 17, 2012.

Peter Rogoff,

FTA Administrator.

[FR Doc. 2012–1195 Filed 1–24–12; 8:45 am]

BILLING CODE;P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 167 (Sub-No. 1191X); Docket No. AB 55 (Sub-No. 710X); Docket No. AB 290 (Sub-No. 552X)]

Consolidated Rail Corporation—Abandonment Exemption—in Philadelphia, PA; CSX Transportation, Inc.—Discontinuance of Service Exemption—in Philadelphia, PA; Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Philadelphia, PA

Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), and Norfolk Southern Railway Company (NSR) (collectively, applicants) jointly have filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* for Conrail to abandon, and for CSXT and NSR to discontinue service over, a 2.98-mile line of railroad known as the Berks Street Industrial Track, extending from milepost 0.00 ± to milepost 2.98 ± in Philadelphia, Pa.[1] The line traverses United States Postal Service Zip Codes 19122, 19123 and 19134.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic that has moved or could move over the line can 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 a 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 these exemptions, any employee adversely affected by the abandonment or discontinuances 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, these exemptions will be effective on February 24, 2012, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by February 6, 2012. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by February 14, 2012, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicants' representative: Benjamin C. Dunlap, Jr., Esquire, Nauman, Smith, Shissler and Hall, LLP, 200 North Third Street, 18th Floor, Harrisburg, PA 17101.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

Applicants have filed a combined environmental and historic report that addresses the effects, if any, of the abandonment and discontinuances on the environment and historic resources. OEA will issue an environmental assessment (EA) by January 30, 2012. Interested persons may obtain a copy of the EA by writing to OEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) 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), Conrail shall file a notice of consummation with the Board to signify that it has exercised the

[1] Applicants state that Conrail has ownership of the line extending from milepost 2.70 to milepost 2.98 but only has operating rights from milepost 0.00 to milepost 2.70. The portion over which Conrail retains only operating rights was sold to the City of Philadelphia in 1978.

[2] 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 exemptions' 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 exemptions' effective date.

[3] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

authority granted and fully abandoned the line. If consummation has not been effected by Conrail's filing of a notice of consummation by January 25, 2013, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 20, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–1515 Filed 1–24–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35562]

Iowa Interstate Railroad, Ltd.—Lease Exemption—Line of Cedar Rapids and Iowa City Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board grants an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 for Iowa Interstate Railroad, Ltd. (IAIS), a Class II rail carrier, to lease and operate 8.4 miles of railroad owned by Cedar Rapids & Iowa City Railway Co. (CRANDIC). The rail line, known as the Hills Line, extends from a connection with CRANDIC's Cedar Rapids-Iowa City line at milepost 25.0 near Burlington Street in Iowa City, Iowa to the end of track at milepost 33.4 in Hills, Iowa. The exemption is subject to employee protective conditions.

DATES: The exemption will be effective on February 24, 2012. Petitions to stay must be filed by February 9, 2012. Petitions for reconsideration must be filed by February 21, 2012.

ADDRESSES: An original and 10 copies of all pleadings, referring to Docket No. FD 35562, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on IAIS's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 245–0395. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: January 18, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–1542 Filed 1–24–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning debt instruments with original discount; imputed interest on deferred payment sales or exchanges of property.

DATES: Written comments should be received on or before March 26, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Debt Instruments With Original Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property.

OMB Number: 1545–1353.

Regulation Project Number: FI–189–84.

Abstract: These regulations provide definitions, reporting requirements, elections, and general rules relating to the tax treatment of debt instruments with original issue discount and the imputation of, and accounting for, interest on certain sales or exchanges of property.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 525,000.

Estimated Time per Respondent: 2 hours 45 minutes.

Estimated Total Annual Burden Hours: 185,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–1407 Filed 1–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2011–74

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2011–74, Vermont Low-Income Housing Relief Credit.

DATES: Written comments should be received on or before March 26, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Vermont Low-Income Housing Relief Credit.

OMB Number: 1545–2217.

Notice Number: Notice 2011–74.

Abstract: The Internal Revenue Service is suspending certain requirements under § 42 of the Internal Revenue Code for low-income housing credit projects in the United States to provide emergency housing relief needed as a result of the devastation caused by Tropical Storm Irene beginning on August 27, 2011.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 600.

Estimated Average Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 17, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–1410 Filed 1–24–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0725]

Proposed Information Collection (Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care)) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0725'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0725.''

SUPPLEMENTARY INFORMATION:

Title: Survey of Veteran Enrollees (Quality and Efficiency of VA Health Care), VA Form 10–21088.

OMB Control Number: 2900–0725.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–21088 will be used to collect data that is necessary to promote quality and efficient delivery of health care through the use of health information technology transparency regarding quality, price and better incentives for program beneficiaries, enrollees and providers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, at page 70831.

Affected Public: Individuals or Households.

Estimated Annual Burden: 18,133.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,080.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1548 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0731]

Proposed Information Collection (Conversion from Servicemembers' Group Life Insurance to Veterans' Group Life Insurance); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 this notice. This notice solicits comments on information needed to ensure that separating service members, especially service members with disabilities are informed about their life insurance option, including converting from Servicemembers' Group Life Insurance to Veterans' Group Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 26, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0731'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Independent Evaluation of the Conversion Privilege from Servicemembers' Group Life Insurance (SGLI) to Veterans' Group Life Insurance (VGLI) for Disabled Service Members.

OMB Control Number: 2900–0731.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected will be used to determine the appropriate target rate to convert claimants from SGLI to VGLI and to evaluate the effectiveness of current outreach practices.

Affected Public: Individuals or households.

Estimated Annual Burden: 413 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,216.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1555 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0723]

Agency Information Collection (Mentor-Protégé Program Application and Reports) Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–2900–0723'' in any correspondence.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7497, FAX (202) 273–0487 or email: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0723.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 819.7108, Application Process.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 819.7113, Reports.

OMB Control Number: 2900–0723.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected under Department of Veterans Acquisition Regulation (VAAR) Clauses 819.7108 and 819.7113 will be used to institute a mentor-protégé program whereby large businesses agree to provide mutually developmental support to veteran-owned small business and service-disabled veteran-owned small business. VA will use the data to measure the protégé progress against the developmental plan contained in the approved agreement and to report the specific actions taken by the mentor to increase the participation of the protégé as a prime or subcontractor to VA.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, page 70828.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

a. VAAR Clause 819.7108, Application Process—50 hours

b. VAAR Clause 819.7113, Reports—150 hours.

Estimated Average Burden per Respondent:

a. VAAR Clause 819.7108, Application Process—60 minutes.

b. VAAR Clause 819.7113, Reports—60 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents:

a. VAAR Clause 819.7108, Application Process—50.

b. VAAR Clause 819.7113, Reports—50.

Total number of Responses: 200.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1549 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0688]

Agency Information Collection (Procedures, and Security for Government Financing) Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0688'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0688.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Department of Veterans Affairs Acquisition Regulation (VAAR) 832.006–4, Procedures.

b. Department of Veterans Affairs Acquisition Regulation (VAAR) 832.202–4, Security for Government Financing.

OMB Control Number: 2900–0688.

Type of Review: Extension of a currently approved collection.

Abstract: Data collected under VAAR 832.006–4 will be used to assess a contractor's overall financial condition, and ability to continue contract performance if payments are reduced or suspended upon a finding of fraud. VA will use the data collected under VAAR 832.202–4 to determine whether or not a contractor has adequate security to warrant an advance payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011 at page 70830.

Affected Public: Businesses or other for-profits.

Estimated Annual Burden:

a. VAAR 832.006–4, Procedures—50 hours.

b. VAAR 832.202–4, Security for Government Financing—10 hours.

Estimated Average Burden Per Respondent:

a. VAAR 832.006–4, Procedures—5 hours.

b. VAAR 832.202–4, Security for Government Financing—1 hour.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAAR 832.006–4, Procedures—10.

b. VAAR 832.202–4, Security for Government Financing—10.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1550 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0548]

Agency Information Collection (Board of Veterans' Appeals Customer Satisfaction With Hearing Survey) Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0548'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0548.''

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, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA'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: Board of Veterans' Appeals Customer Satisfaction with Hearing Survey, VA Form 0745.

OMB Control Number: 2900–0548.

Type of Review: Extension of a currently approved.

Abstract: VA Form 0745 is completed by appellants at the conclusion their

hearing with the Board of Veterans' Appeals. The data collected will be used to assess the effectiveness of current hearing procedures used in conducting hearings and to develop better methods of serving veterans and their families.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, at page 70827.

Affected Public: Individuals or households.

Estimated Annual Burden: 65 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 650.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1551 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0098]

Proposed Information Collection (Dependents' Application for VA Educational Benefits) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), 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 currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's spouse, surviving spouse, or child eligibility for Survivors' and Dependents' Educational Assistance and Fry Scholarship benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 26, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0098'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or fax (202) 275–5947.

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, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA'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: Dependents' Application for VA Educational Benefits (Under Provisions of Chapters 33 and 35, of title 38, U.S.C.), VA Form 22–5490.

OMB Control Number: 2900–0098.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–5940 is completed by spouses, surviving spouses and children of veterans or servicemembers to apply for Survivors' and Dependents' Educational Assistance (DEA) and Post-9/11 GI Bill Marine Gunnery Sergeant John David Fry Scholarship (Fry Scholarship) benefits. VA will use the information collected to determine whether a claimant qualifies for DEA or Fry Scholarship benefits and if the program of education the applicant wishes to pursue is approved for assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 22,566.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 30,088.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1556 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0208]

Agency Information Collection (Architect—Engineer Fee Proposal) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0208'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0208.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Architect—Engineer Fee Proposal, VA Form 10–6298.

b. Daily Log (Contract Progress Report—Formal Contract), VA Form 10–6131.

c. Supplement Contract Progress Report, VA Form 10–61001a.

OMB Control Number: 2900–0208.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. An Architect-engineering firm selected for negotiation of a contract with VA is required to submit a fee proposal based on the scope and complexity of the project. VA Form 10–6298 is used to obtain such proposal and supporting cost or pricing data from the contractor and subcontractor.

b. VA Forms 10–6131 and 10–6001a are used to record data necessary to assure the contractor provides sufficient labor and materials to accomplish the contract work. VA Form 10–6131 is used for national contracts and VA Form 10–6001a is used for smaller VA Medical Center station level projects and as an option on major projects before the interim schedule is submitted.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, at page 70829.

Affected Public: Business or other for-profit.

Estimated Annual Burden:

a. VA Form 10–6298—1,000.

b. VA Form 10–6131—3,591.

c. VA Form 10–6001a—750.

Estimated Average Burden per Respondent:

a. VA Form 10–6298—4 hours.

b. VA Form 10–6131—12 minutes.

c. VA Form 10–6001a—12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 10–6298—250.

b. VA Form 10–6131—17,955.

c. VA Form 10–6001a—3,750.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1552 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0669]

Agency Information Collection (Claim for Credit of Annual Leave) Activities Under OMB Review

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0669'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0669.''

SUPPLEMENTARY INFORMATION:

Title: Claim for Credit of Annual Leave, VA Form 0862.

OMB Control Number: 2900–0669.

Type of Review: Extension of a currently approved collection.

Abstract: Current and former employee's who were charged annual leave on a non-workday while on active military duty complete VA Form 0862 to request restoration of annual leave. Those employees who separated or retired from VA will receive a lump sum payment for any reaccredited annual leave. The claimant must provide documentation supporting the period that he or she were on active military duty during the time for which they were charged annual leave on a non-workday.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, at pages 70830–70831.

Affected Public: Individuals or households and Federal Government.

Estimated Annual Burden: 3,375 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 13,501.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1553 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0198]

Agency Information Collection Activity (Application for Annual Clothing Allowance) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 24, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0198'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7579, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0198.''

SUPPLEMENTARY INFORMATION:

Title: Application for Annual Clothing Allowance (Under 38 U.S.C. 1162), VA Form 10–8678.

OMB Control Number: 2900–0198.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–8678 is used to gather the necessary information to

determine if a veteran is eligible for clothing allowance benefits due to a service connected disability. Clothing allowance is payable if the veteran uses a prosthetic or orthopedic device (including a wheelchair) that tends to wear out or tear clothing or is prescribed medication for a skin condition that causes irreparable damage to outer garments.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 15, 2011, at pages 70829–70830.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,120 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 6,720.

Dated: January 20, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–1554 Filed 1–24–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Transportation

Federal Transit Administration

49 CFR Part 611

Major Capital Investment Projects; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. FTA–2010–0009]

RIN 2132–AB02

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) proposes a new regulatory framework for FTA's evaluation and rating of major new transit investments seeking funding under the discretionary ''New Starts'' and ''Small Starts'' programs. This notice of proposed rulemaking is being published concurrently with a Notice of Availability of proposed guidance that proposes new measures and methods for calculating the project justification and local financial commitment criteria specified in statute and this proposed rule. FTA seeks public comment on both this proposed rule and the proposed guidance.

DATES: Comments must be received by March 26, 2012.

ADDRESSES: You may submit comments identified by the docket number FTA–2010–0009 by any of the following methods:

1. *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments on the U.S. Government electronic docket site.
2. *Fax:* (202) 493–2251.
3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Ave. SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Ave. SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA–2010–0009) for this NPRM at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted without change to *www.regulations.gov* including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477). Docket: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave. SE., Docket Operations, M–30, West Building Ground Floor, Room W12–140, Washington, DC 20590 between 9 a.m. and 5 p.m., EST, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Day, Office of Planning and Environment, (202) 366–5159; for questions of a legal nature, Christopher Van Wyk, Office of Chief Counsel, (202) 366–1733. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

This NPRM is being issued to amend the regulation (Part 611 of Title 49 of the Code of Federal Regulations) under which the Federal Transit Administration (FTA) evaluates major new transit investments seeking funding under the discretionary ''New Starts'' and ''Small Starts'' programs authorized by Section 5309 of Title 49, U.S. Code. The New Starts and Small Starts programs are FTA's primary capital funding programs for new or extended fixed guideway and bus rapid transit systems across the country, including rapid rail, light rail, commuter rail, bus rapid transit, and ferries. This proposed rule was the subject of an Advance Notice of Proposed Rulemaking (ANPRM) issued on June 3, 2010, which posed a series of questions about the current regulation, and in particular about three of the criteria used to assess project justification.

In developing this NPRM, FTA has been guided by two broad goals. First, FTA intends, as suggested by the ANRPM and by the Secretary's announcement of January 13, 2010, to measure a wider range of benefits transit projects provide. Second, FTA desires to do so while establishing measures that support streamlining of the New Starts and Small Starts project development process. In balancing these goals, FTA is seeking to continue a system in which well-justified projects are funded. At the same time, FTA seeks to ensure that it does not perpetuate a system in which the measures used to determine the project justification or local financial commitment are so complex that they unnecessarily burden projects sponsors and FTA, or that make it increasingly difficult to understand, which hinders effective involvement of the public.

To streamline the process, FTA is first proposing a simplified measure of mobility benefits. Second, FTA is proposing to expand the ability of projects to pre-qualify based on the characteristics of the project or the corridor in which it is located. As with the current ''Very Small Starts'' category, FTA proposes to determine what characteristics would be sufficient, without further analysis, to warrant a satisfactory rating of ''medium'' on one or more of the evaluation criteria. Third, FTA is proposing ways the data submitted by project sponsors and the evaluation methods employed by FTA could be simplified. Fourth, FTA is proposing to greatly simplify the process for developing a point of comparison for incremental measures (i.e., measures that are based on a comparison between two different scenarios, such as a comparison of Vehicle Miles of Travel (VMT) in the corridor without the project and VMT in the corridor with the project). Fifth, FTA is proposing to clarify the local financial commitment criteria to address more clearly the strong interaction between capital and operating funding plans. Finally, FTA is proposing that if a project stays within a certain ''envelope'' of cost and scope during the project development process, no further re-evaluation of project merit will be required.

To address more explicitly the broad range of benefits that transit projects provide, FTA is proposing several ways such benefits will be incorporated into the evaluation process. In particular, this includes livability principles and goals that relate strongly to the purposes of many transit investments. More specifically, FTA is proposing to include more meaningful measures of the environmental benefits and economic development effects of projects and to give these measures equal weight in the evaluation of project justification.

II. What This NPRM Contains

This NPRM is one way FTA seeks to accomplish the two goals outlined above; FTA is also publishing a notice in the **Federal Register** today that proposes guidance related to the proposals in this NPRM that is available for public review and comment. The regulations act as a framework for the project evaluation process, and the policy guidance provides non-binding

interpretations for implementing the regulations. Under current law, FTA is required to issue such policy guidance for public comment at least every two years and whenever major changes in policy are proposed. FTA believes that this approach allows FTA to make improvements in the criteria as new techniques become available. FTA encourages comment on both the NPRM and the proposed policy guidance.

The Executive Summary that follows describes the New Starts and Small Starts programs, describes the ANPRM published on June 3, 2010, describes the general approach taken in the NPRM, and discusses several key issues and how they are resolved.

The following section includes a detailed summary of the comments received on the ANPRM and FTA's response to those comments. FTA received over 2,000 individual comments from over 160 respondents to the ANRPM. FTA made a special effort to categorize the comments by topical area, group them, and summarize them so as to assure all relevant comments received consideration in the development of this NRPM and accompanying proposed policy guidance. The responses to comments will provide a sense of the proposals that FTA is carrying forward through this NPRM and accompanying proposed policy guidance, but those proposals are more specifically detailed in the ''Section-by-Section'' analysis that directly follows the comment summaries and responses.

The Section-by-Section analysis is intended to do two things: (1) Explain the proposed changes to the regulatory text found at the end of this NPRM; and (2) provide some sense of what is in the related proposed policy guidance also being published for comment today. FTA is bound by the current law when it comes to the process used to evaluate, rate, and approve funding for New Starts and Small Starts projects, including the criteria used to evaluate them. But FTA has made an effort in this proposal to introduce a number of streamlining features compatible with current law. In addition, and separately from this effort, FTA will be pursuing additional legislative changes to further streamline the process as part of its efforts toward reauthorization of its programs.

Following the Section-by-Section analysis is the ''Regulatory Evaluation'' section of this NPRM, which includes descriptions of the requirements that apply to the rulemaking process and information on how this rulemaking effort fits within those requirements. FTA encourages you to read these and submit comments on them.

The NPRM concludes with the actual regulatory text FTA is proposing for its New Starts and Small Starts programs. This is the language that, if finalized, would govern the way New Starts and Small Starts projects are evaluated, rated, and funded. The language would be binding, which means FTA's future policy guidance documents would need to be consistent with the language. FTA seeks your comments on this proposed regulatory text.

III. Executive Summary

The New Starts and Small Starts programs, established in Section 5309(d) and (e) of Title 49, U.S. Code, are FTA's primary capital funding programs for new or extended transit systems across the country, including rapid rail, light rail, commuter rail, bus rapid transit, and ferries. Under this discretionary program, proposed projects are evaluated and rated as they seek FTA approval for a Federal New Starts or Small Starts funding commitment to finance project construction. Currently, overall ratings for proposed New Starts and Small Starts projects are based on summary ratings for two categories of criteria: project justification and local financial commitment. Within these two categories, projects are evaluated and rated against several criteria specified in law. Details on how projects are currently evaluated and rated are set forth in the FTA regulations at 49 CFR Part 611, which can be found at the following web address: *http://www.gpo.gov/fdsys/pkg/CFR–2009-title49-vol7/pdf/CFR–2009-title49-vol7-part611.pdf*.

Several statutory changes since 49 CFR Part 611 was first written have modified the evaluation process, including the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) signed on August 10, 2005, and the SAFETEA–LU Technical Corrections Act of 2008, signed on June 6, 2008. FTA announced the most recent policy guidance on the evaluation process (issued to address the SAFETEA–LU Technical Corrections Act) on July 29, 2009. This policy guidance is available in the **Federal Register** at 74 FR 37763. A summary of the evaluation and rating process can be found at *http://fta.dot.gov/documents/FY12_Evaluation_Process(1).pdf.*

1. The Advance Notice of Proposed Rulemaking (ANPRM)

The ANPRM sought comment on three of the evaluation criteria under the project justification category: Cost effectiveness, environmental benefits, and economic development benefits.

a. Cost Effectiveness. All of the project justification criteria characterize the effectiveness of projects in addressing the objectives identified by the statute; cost effectiveness is currently the only project justification criterion that examines whether certain benefits are in scale with project costs. Cost effectiveness is not, however, an attempt to perform a full cost-benefit analysis. In its current cost effectiveness measure, FTA includes the direct mobility benefits of the project and compares them to the annualized capital and operating costs of the proposed project as compared to a baseline alternative. FTA defines mobility benefits as any measurable change from the proposed project in travel time, including walking, waiting, transfers, and other attributes of travel on the transportation system as compared to the baseline alternative.

Although FTA's definition of mobility benefits includes time savings to highway users caused by congestion relief, FTA has not been using projections of highway time savings because of their unreliability and inconsistency. Instead, in determining cost effectiveness ratings, FTA credits all projects with an allowance for highway time savings that is equal to 20 percent of the project-specific transit travel time savings. FTA has sponsored research on better methods to predict highway time savings so that project-specific highway time savings might someday be included in the mobility benefits that are compared to project costs in the cost effectiveness calculation.

FTA has also not included other benefits among the project-specific benefits used to compute the current cost effectiveness measure because of the difficulties of combining the broad range of other benefits into a common unit of measurement. Instead, in determining cost effectiveness ratings, FTA currently credits all projects with an allowance for other benefits that is equal to 100 percent of the project-specific time savings. FTA sought comment in the ANPRM on ways to quantify and value other benefits so that they can be included as project-specific benefits, rather than as a general allowance, in the comparison against project costs that is done in measuring cost effectiveness.

Beginning in April 2005, FTA had in place a budget decision approach that required at least a ''medium'' rating on cost effectiveness for a project to be considered for funding in the

President's annual budget. Members of the transit community criticized that policy and questioned the way in which FTA measured cost effectiveness. Specifically, the transit community expressed concern that receiving a ''low'' or ''medium-low'' cost effectiveness rating ''trumped'' the other project justification criteria established by law. Critics also noted that projects were sometimes designed to achieve a ''medium'' cost effectiveness rating to remain eligible for funding while sacrificing other potentially important considerations (such as station locations and/or design features to accommodate ridership growth). On January 13, 2010, Secretary Ray LaHood announced the end of that budget decision approach. This new direction presented FTA with an opportunity to rethink how it evaluates cost effectiveness for projects seeking New Starts and Small Starts funding, which led to this rulemaking effort.

Quantitative measures often require evaluating the incremental (or added) benefits of implementing a proposed project against some other alternative. FTA sought comment in the ANPRM on what the point of comparison should be. As stated above, projects are currently evaluated against a ''baseline alternative,'' which is defined as the ''best that can be done'' to address identified transportation needs in the corridor without a major capital investment in new infrastructure. The baseline alternative generally includes lower cost actions such as traffic engineering, enhanced bus service and other transit operational changes, and modest capital improvements such as reserved lanes, park-and-ride lots, and transit terminals. Although less expensive than the proposed project, the baseline alternative may still result in substantial costs, particularly in complex study areas with significant transportation problems.

For more information how FTA currently calculates cost effectiveness, see the summary of the evaluation and rating process available at *http://fta.dot.gov/documents/FY12_Evaluation_Process(1).pdf*

b. Environmental Benefits. Since environmental benefits was first added as a project justification criterion in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), FTA has attempted through various methods, with limited success, to meaningfully measure and compare the environmental benefits of transit projects in the project development pipeline, even though each project may be located in a unique environmental setting.

For a number of years, FTA measured air quality effects using a regional forecast of the change in vehicle miles of travel (VMT) expected to result from implementation of the proposed project compared to the baseline alternative in the forecast year. The results of that approach proved unsatisfactory because any one project had only a minor effect on total regional air quality. The results also did not take into account the severity of the metropolitan area's air quality problems or the size of the population exposed to polluted air. Because of those concerns, FTA switched to using the Environmental Protection Agency's (EPA) air quality conformity designation of the metropolitan area in which the proposed project is located as the sole basis for assigning a rating on environmental benefits.

Although FTA has focused solely on air quality for the environmental benefits criterion in the past, the statute is written broadly enough to allow FTA to take into account other factors such as noise pollution, energy consumption, reductions in local infrastructure costs achieved through compact land use development, and the cost of suburban sprawl. In the ANPRM, FTA sought input on how better to assess all of the environmental benefits connected with a proposed project.

c. Economic Development. Under its current approach, FTA has defined economic development as the extent to which a proposed project is likely to enhance additional, transit-supportive development. Currently, FTA rates the economic development effects of major transit investments on the basis of the transit-supportive plans and policies in place and the demonstrated performance and impact of those policies. These ''on the ground'' indicators characterize the environment in which a project would be built and are not intended to predict future development outcomes. In the ANPRM, FTA requested input on how better to define economic development and on how to establish an improved approach for assessing these benefits.

d. Outreach. In support of this ANPRM, FTA held a series of public outreach meetings at which FTA staff made oral presentations on the ANPRM and provided meeting attendees with an opportunity to pose questions. Additionally, the sessions were intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions. These sessions, announced in the **Federal Register**, were held in: Raleigh, NC; Vancouver, Canada (in connection with the American Public Transportation Association's annual Rail Conference); Chicago, IL; San Francisco, CA; Dallas, TX; and Washington, DC In addition, two webinars were held to provide the same opportunity for those unable to attend the other outreach sessions in person.

2. Key Issues and Proposed Resolution

The ANPRM laid out a series of questions on cost effectiveness, environmental benefits, and economic development effects. This section describes the current approach and lays out the changes being proposed in this NPRM. These proposed changes are the result of a review of the comments received and an application of the lessons learned from implementation of the current methods.

a. Cost Effectiveness. Currently, cost effectiveness is evaluated based on the incremental annualized capital and operating cost of the project per hour of travel time savings (i.e., the cost of the project divided by how much time it would save travelers). Changes in cost and travel time are calculated by comparing the proposed project with a baseline alternative. FTA's thresholds for assigning ratings from ''low'' to ''high'' are based on U.S. DOT guidance on the value of time. To establish these thresholds, benefits other than travel time savings are not calculated directly, but are assumed to be equal to the value of the travel time savings (as described above).

FTA is proposing a significantly different and simpler approach. The measure of cost effectiveness is proposed to be cost (annualized capital cost and operating cost) per trip taken on the project, with extra weight given to project trips made by transit dependents, with some allowances for ''betterments'' to be excluded from the cost side of the equation.

This proposed measure is intended to be much simpler that the current measure. It also allows project sponsors to use simplified forecasting methods for estimating project trips rather than traditional local travel forecasting methods. Given that the measure of effectiveness is not an incremental measure, there is no need for a point of comparison, or ''baseline alternative,'' to calculate it. To calculate the annualized capital and operating costs of the proposed project, the point of comparison would be the existing system.

FTA proposes the cost of ''betterments,'' would be excluded from the cost side of the cost effectiveness calculation. Betterments are those items above and beyond the items needed to

deliver the mobility benefits of the project and that would not contribute to other benefits such as operating efficiencies. Betterments may include, for example, features needed to obtain LEED certification for the transit facilities or additional features to provide extra pedestrian access to surrounding development or aesthetically-oriented design features. This would remove a disincentive to include such features in the design of projects. FTA is interested on receiving comments on the kinds of betterments that should be excluded from the calculation.

FTA is proposing, in addition, to develop pre-qualification approaches that would allow for a project to automatically receive a satisfactory rating on cost effectiveness based on its characteristics or the characteristics of the project corridor. These approaches would be developed by analyzing how certain project or corridor characteristics would contribute to producing a satisfactory rating on cost effectiveness. In this way, a project whose characteristics met or exceeded a certain threshold value could be automatically rated without further project-specific analysis. Proposed pre-qualification values (''warrants'') would be proposed in policy guidance for comment by the public.

b. Environmental Benefits. Currently, FTA uses the EPA air quality designation for the metropolitan area in which a project is proposed to be located. Thus, FTA assigns projects located in non-attainment areas (areas that EPA has designated as having poor air quality) with a ''high'' rating; all other projects receive a ''medium'' rating.

FTA is proposing to expand the measure for environmental benefits to include direct and indirect benefits to the natural and human environment. Based on estimated changes in vehicle miles of travel (VMT), FTA would evaluate air quality based on changes in total emissions of EPA criteria pollutants, changes in energy use, changes in total greenhouse gas emissions, and safety changes including the amount of accidents, fatalities, and property damage. Changes in public health, such as benefits associated with long-term activity levels that would result from changes in development patterns, would be included once better methods for calculating this information are developed.

Estimated changes in VMT would be calculated in one of two ways. If the project sponsor uses the simplified forecasting method developed by FTA, changes in VMT would be imputed using standard factors developed by FTA that are applied to the estimated project-trips and passenger-miles. If a project sponsor chooses at its option to use standard local travel forecasting methods, the changes in VMT would be an output of the local travel forecasting process. The estimated environmental benefits would be monetized and compared to the annualized capital and operating cost of the proposed project.

c. Economic Development. Currently, FTA rates the economic development effects of major transit investments on the basis of the transit-supportive plans and policies in place and the demonstrated performance and impact of those policies. FTA proposes to continue to use this measure and to add a consideration of the social equity impacts of the proposed investment by assessing the degree to which policies maintaining or increasing affordable housing are in place. The number of domestic jobs related to design, construction and operation of the project would also be reported.

FTA is also proposing to allow project sponsors, at their option, to estimate indirect changes in VMT resulting from changes in development patterns that are anticipated to occur with implementation of the proposed project. The resulting environmental benefits would be calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. In is anticipated that the project sponsor would undertake an analysis of the economic conditions in the project corridor, the mechanisms by which the project would improve those conditions, the availability of land in station areas for development and redevelopment, and a pro forma assessment of the feasibility of specific development scenarios.

3. Streamlining

Aside from changes that will improve FTA's measures for evaluating projects, FTA is proposing some changes that are intended to streamline the process.

First, FTA is proposing to allow project sponsors to forgo a detailed analysis of benefits that are unnecessary to justify a project. For example, if a project rates ''medium'' overall based on benefit calculations developed using existing conditions in the project corridor today, the project sponsor would not be required to do the analysis necessary to forecast benefits out to some future year (i.e., a ''horizon'' year). Similarly, FTA is proposing to develop methods that can be used to estimate benefits using simple approaches. Only when a project sponsor feels it is necessary to further identify benefits beyond a simplified method would more elaborate analysis be undertaken, and only at the project sponsor's option.

IV. Response to Comments

The following is a summary of the comments received in response to the questions in the ANPRM, FTA's response to the comments received, and our proposal for addressing the issue raised by the questions in this NPRM. FTA received approximately 165 comment submissions from a wide-range of organizations and individuals. Comments included operators of public transportation; a private bus operator; State departments of transportation; a Federal agency; a member of Congress, metropolitan planning organizations (MPO) and regional councils of governments; local governments or entities; trade organizations; national non-profit organizations; lobbyists; research institutions; local or regional community organizations; private citizens; and businesses.

Please note that FTA attempted to respond to all relevant comments received on the ANPRM. FTA provided a more detailed response, however, only to comments that specifically addressed the issues presented in the ANPRM. General comments that did not pertain specifically to those topics were summarized at the beginning of this section.

A. General Comments

1. Funding Based on Regional or Project Characteristics

Comment: A number of comments suggested separate funding streams depending on the characteristics of the project or the region in which it is located. One comment suggested that FTA separate funding streams based on regional population to afford projects in medium-to-small regions a better chance to compete for funding. Another suggested creating separate funding opportunities for new transit initiatives and one for additions to existing systems. One comment suggested distinguishing between new corridors, extensions, and circulator projects.

Response: FTA is bound by the current law, in which funding eligibility is distinguished only by the size of the project and the amount of New Starts/Small Starts funds being sought. FTA believes the simplified project development and evaluation processes for smaller projects provide an opportunity for smaller and medium sized regions to compete. So long as there is a single source of funding in law for both extensions and completely new

systems, FTA must evaluate them using the same criteria.

2. Additional and Updated Guidance

Comment: Numerous comments suggested FTA publish additional guidance on the New Starts/Small Starts project development and evaluation processes. For example, several comments suggested publishing additional guidance for how to achieve higher project justification ratings, although one comment suggested FTA retain its current level of guidance emphasizing the importance of regional and local land use planning, zoning, and economic development. Individual comments were received suggesting FTA should:

- Annually publish a capital cost analysis looking at regional variations and cost trends, as well as the actual as-built project costs and New Start application costs.
- Issue guidance on policies that support land use goals and transit-oriented development (TOD) planning.
- Update FTA's 2004 contractor guidelines on land use and economic development and issue it as official guidance to all applicants.
- Provide project sponsors with complete details on cost estimating and an actual FTA high-reliability ridership model.
- Facilitate the application process with best practices, guidelines, or other explanatory materials.
- Maximize public investment by using FTA resources to provide guidance, best practices, and research to facilitate efficient and cost-effective project completion.
- Clarify FTA's goals, objectives, and desired outcomes from the New Starts process.
- Assure the application process is clear, comprehensible, and efficient, so that project sponsors have sufficient time to make necessary project decisions according to whether they have qualified for funding.
- Create a comprehensive, up-to-date source of guidance for applicants.
- Enhance its current Lessons Learned and Best Practices procedures.
- Update the New and Small Starts guidance to reflect changes in policies and administrative requirements and make it consistent with the FTA Web site.

Response: FTA agrees with the importance of providing clear and up-to-date guidance about the project development and evaluation processes. By law, FTA is required to publish guidance about its policies for New and Small Starts at least every two years for comment, and whenever it intends to make a substantive change in its procedures or evaluation criteria. FTA intends to use this process to provide periodic updates to its policies and procedures in this arena. FTA also intends to continue to provide technical assistance in the form of research, training, and technical assistance materials on all aspects of the process. FTA appreciates the suggestions for specific areas of attention, and will use these, as well as comments on this rulemaking process, to guide the development of policy and procedural guidance and technical assistance activities in the future. In particular, FTA intends to use its Web site to provide a source for updated technical assistance and guidance materials.

3. Livability and Sustainability

Comment: A number of comments addressed the topic of how FTA should address the Administration's livability and sustainability initiatives. A few comments expressed general support for the new livability initiative and policy shift to support transit projects with positive community, environmental, and economic impacts. One comment expressed support for the Administration's livability and sustainability initiatives recognizing the connection among DOT, HUD, and EPA in future regional and local planning efforts. Another comment, however, suggested ignoring sustainability and livability claims.

Response: FTA believes its New and Small Starts project development and evaluation processes should address the Administration's livability and sustainability goals. Current law provides that projects be evaluated by factors including environmental benefits and economic development effects, which relate very strongly to these goals. In addition, the degree to which these projects are supported by local transit supportive plans and policies is also a criterion specified in law that FTA proposes to continue measuring.

Comment: A series of comments suggested ways FTA could support this initiative by altering its evaluation criteria. One comment expressed concern that the current criteria are not compatible with streetcar projects, and along with another comment, recommended FTA adopt performance measures supporting the livability and sustainability criteria. One comment made a general suggestion that FTA review the entire livability program and alter its rating system to address features of the program. Another comment, however, recommended FTA develop new rating factors that only award more points to applicants agreeing to increase affordable housing investment within one-half mile of planned transit stops. A couple of comments suggested the six Federal livability and sustainability criteria should be the primary criteria in law for New Starts. A couple of other comments expressed support for FTA's furtherance of the goals of the Partnership for Sustainable Communities through its New Starts and Small Starts program analyses. Others recommended New Starts and Small Starts projects support building healthy and sustainable communities of opportunity, recommending livability indicators as a means for attaining that outcome. One comment recommended the criteria for New Starts and Small Starts funds should focus on the improvements made towards safer walking and biking environments. Another comment recommended modifying the New Starts and Small Starts regulation to incentivize the preservation and expansion of affordable housing near planned transit stops.

Response: FTA believes it can address livability and sustainability in measures it establishes for the environmental benefits, economic development effects, and land use criteria. FTA believes reductions in energy use and greenhouse gas and air pollutant emissions are the primary environmental benefits of transit projects that promote sustainability. FTA is proposing to evaluate the magnitude of these benefits in its environmental benefits criterion. FTA also believes it can address livability benefits of proposed investments by assessing transit supportive economic development plans and policies, existing and proposed, that would promote development in concert with assessing the degree to which those policies protect affordable housing.

In addition, FTA is proposing to allow project sponsors to evaluate the magnitude of the projected benefits that come from denser development around the transit investment as part of the measure for economic development. At the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

Comment: Other comments addressed how funding priorities might be established to support the livability and sustainability initiatives. One comment recommended funding transportation projects that ensure that communities

have streets, sidewalks, and transportation networks that are safe and inviting. Another comment suggested addressing national environmental and climate challenges by promoting low-carbon types of transportation modes via integration of transportation, housing, environment, and community revitalization strategies. One other comment encouraged FTA to consider the unequal treatment of highway and transit investments as the primary obstacle to improving livability.

Response: FTA does not believe it is necessary to explicitly establish funding priorities for certain kinds of projects. Rather, it believes having evaluation criteria in place that reward projects that achieve more environmental benefits and economic development effects can provide sufficient incentives to project sponsors to meet these goals. FTA notes the way highway and transit projects are treated is a feature of surface transportation law and cannot be changed through rulemaking.

4. Methodology

Comment: A few comments addressed the weights assigned to the various evaluation criteria. The first comment suggested FTA's rating system give up to 40 percent of the points awarded for local matching funds. Another comment suggested only weighting environmental benefits higher than ten percent. A third comment suggested FTA give points to sponsors leveraging symbiotic projects that have private funds from rail companies or industry.

Response: According to existing law, FTA must evaluate the six specified project justification criteria and give ''comparable, but not necessarily equal'' weight to each. Separately, FTA must evaluate local financial commitment and produce a rating for it based on the various factors specified in the law. The separate ratings for project justification and local financial commitment must then be combined into an overall rating. The weightings for the project justification criteria will not be included in this proposed rule. Rather, FTA is proposing specific weights in the accompanying policy guidance. FTA does not believe it is appropriate to provide additional weight to projects with private funding. The source of local funding is not as important as whether the project has adequate overall financial support from non-Federal sources for both capital and operating costs.

Comment: A couple of comments questioned how FTA planned to incorporate incomplete studies commissioned by FTA, including Transit Cooperative Research Program studies H–39, H–41, and H–42, to develop data for future project evaluation.

Response: FTA will consider the results of these studies when they become available through policy guidance issued for notice and comment at least every two years. This will allow FTA to take into account any improved methodologies that may result from these and other studies conducted in the future.

Comment: Several comments included general suggestions for additional evaluation factors. One comment suggested adding a transit agency's management-labor relations history as a factor. Another comment expressed support for comparing project cost to shortened commute times. One other comment recommended that the project justification criteria should better address equity benefits associated with transit projects.

Response: FTA does not believe labor-management relations affect the relative performance or merits of a proposed transit investment. Shortened commute times are one important factor in assessing project merit, but FTA believes a simple measure of project effectiveness, such as system usage, is a reasonable proxy for a wide variety of project benefits. FTA also believes shortened commute times can be an important part of evaluating the likelihood a project will produce economic development benefits since improvements in accessibility are often a major reason why development occurs around transit investments. FTA agrees equity issues are an important part of project evaluation and is proposing to incorporate assessments of equity into its evaluations of project justification.

Comment: Some comments made general methodological suggestions. Of these, one comment questioned the use of a cost effectiveness decision rule. The other comment recommended FTA combine a quantitative and qualitative framework for New and Small Starts project evaluation.

Response: FTA agrees that cost effectiveness should not be the primary test of project merit. It is for that reason the Secretary of Transportation announced in January 2010 that FTA would no longer require a ''medium'' rating on cost effectiveness, but would return to the approach prescribed by law in which six project justification criteria (including cost effectiveness) would be evaluated and given ''comparable, but not necessarily equal'' weight. This NPRM proposes to continue that approach. FTA will propose both quantitative and qualitative measures.

5. Other General Comments

Comment: One comment suggested program goals should include public communication specifically targeting transit advocates. Another comment encouraged FTA to support development of mixed-use activity centers with varied transportation access because they will provide the highest return on Federal New Starts investments. One comment questioned why FTA held a public outreach session in Vancouver, Canada.

Response: FTA believes communication is a particularly important part of its New and Small Starts process and thus will continue to work to make sure all parties in the process have a clear understanding of the project development and evaluation processes. FTA will continue to use its Web site, training, publication of technical assistance and guidance documents, and outreach sessions to make the process as transparent as possible. FTA also believes a simpler, more understandable process for determining project merit can add considerably to more effective participation by the public and agrees that good transportation access and mixed-use development are important to assuring transit investments are successful. FTA is incorporating an assessment of these features in its economic development and land use criteria. FTA held an outreach session in Vancouver in connection with the American Public Transportation Association's annual Rail Conference. This site was selected because it was an event at which a substantial number of U.S. public transportation agencies and other interested parties would be in attendance during the public comment period. FTA also held outreach sessions at a number of other sites in the United States where such interested parties were likely to be able to attend, as well as two Webinars for those who were unable to be at one of the sessions in person.

B. Cost Effectiveness

Measuring Cost Effectiveness

Cost Effectiveness Question 1: ''How might FTA better evaluate cost effectiveness?''

1. Conceptual Basis for Comparing Benefits and Costs

Comment: A large number of comments suggested various ways of comparing costs and benefits. Comments also provided thoughts on the difference between a cost effectiveness evaluation and a cost-benefit analysis.

One comment stated cost effectiveness is often wrongly confused with cost-benefit analysis. The comment stated cost-benefit analysis is appropriate when it is possible to calculate all benefits and costs in dollars (or some other common denomination), but a cost effectiveness evaluation is appropriate when it is not possible to express all of the potential benefits of investments in dollar terms. The comment stated that for a cost effectiveness evaluation, benefits that cannot be expressed in dollars must still be quantified using some other measure or measures such as hours of time saved, tons of abated air emissions, or accident fatalities avoided, with the costs in dollars divided by the benefits to calculate the cost per hour, ton, fatality, or whatever is the benefit. The comment favored quantification of the annual outputs (or savings) of each of the key non-monetary benefits under each of the local alternatives.

According to another comment, cost effectiveness is best understood and evaluated by comparing costs to ridership and then understanding other benefits individually. This comment stated that development of a single cost effectiveness measure that captures what decisionmakers would expect is too complex to ever explain and, therefore, not useful in this context. Another comment also argued the law does not require a single cost effectiveness measure.

Response: FTA agrees a cost effectiveness evaluation should not be confused with a cost-benefit analysis. FTA believes a cost effectiveness evaluation is more appropriate for New and Small Starts project evaluation than is a cost-benefit analysis because it is very difficult to express many of the benefits of these transit projects in dollar terms. Further, the statute explicitly calls for cost effectiveness as one of a series of measures of project justification. FTA agrees a wide range of benefits should be quantified and is proposing to do so in this NPRM and in the accompanying policy guidance made available for public comment today.

FTA agrees it makes sense to compare costs to measures of ridership and to account explicitly for other benefits in the other measures of project justification. Although the law may not require a single measure of cost effectiveness, FTA believes having multiple cost effectiveness measures would cause too much complexity and confusion. However, FTA believes it is appropriate to use cost as a way to scale environmental benefits (including the indirect environmental benefits that may be estimated at the project sponsor's option under the economic development criterion), but that it is better to calculate a summed monetary value for these benefits, rather than having a series of measures, one for each kind of environmental benefit.

2. Calculating Costs

Comment: One comment stated the current cost effectiveness measure is adequate for large New Starts projects, and that the most effective way to improve it is to change FTA's treatment of New Starts project costs. Some comments stated concern that traditional cost effectiveness measures along with FTA's current guidance can be a challenge for projects located in more mature urban transit network environments due to higher real estate costs in those areas. Other comments agreed with this sentiment, further stating FTA should index or otherwise normalize the cost effectiveness thresholds to differentiate between ''low,'' ''medium-low,'' ''medium,'' ''medium-high,'' and ''high'' ratings to reflect local cost levels, which are often higher in denser areas having the greatest transit needs. One other comment suggested FTA develop peer-specific cost effectiveness standards. Another comment said FTA should develop a method for ''equalizing'' the comparative disadvantages of projects that have higher capital costs because they are situated in environments that necessitate complex construction methods. Along similar lines, another comment stated FTA should account for cost differences among regional economies on the cost side of the cost effectiveness calculation.

Also with respect to calculating cost, one comment argued the seven percent discount rate used by FTA to annualize costs in the existing cost effectiveness calculation is high, such that it discriminates against large, very long-term benefits associated with heavy rail projects.

Finally, one comment argued a fully-allocated cost model better applies to new systems, and an incremental cost model better applies to expansions of existing systems. This comment also stated current FTA policy appears to prefer a fully allocated cost model.

Response: FTA believes in general that its current approach to evaluating capital costs in the cost effectiveness measure is appropriate. FTA also believes, however, the cost of certain ''betterments'' should be excluded from the cost effectiveness calculation. These include the incremental costs of features that may be required to obtain LEED certification of public transportation facilities. Such project features can achieve environmental benefits not well captured in the assessment of changes in travel behavior that accompany public transportation investments, such as improved water quality or reduced runoff, even though some of these project elements might also produce operating cost savings that would be assessed under the operating efficiencies criterion. To include these costs in the calculation of cost effectiveness would penalize project sponsors making such investments, and would provide a disincentive to making them. FTA does not believe it is appropriate to adjust the costs used in the cost effectiveness measure for local real estate costs, construction complexity, or above-average construction costs. Project sponsors are competing for scarce funds at the national level, so it is necessary to determine which projects are the most cost effective investments of Federal funds. For this purpose, it is necessary to determine how much each dollar of Federal funding is purchasing.

FTA agrees the current seven percent discount rate used to annualize costs in the current cost effectiveness measure is a stiff test for very long-term investments and is proposing to change it to two percent.

FTA believes its approach for calculating costs is appropriate. Although an incremental cost model may make sense when it comes to developing estimates for use in financial planning, for the purposes of understanding the complete cost of a particular investment, a fully allocated approach makes sense.

3. Determining What Costs Should Be Included in Cost Effectiveness

Comment: FTA received a number of comments concerning what costs should be included in the calculation of cost effectiveness. Sixteen comments supported basing the calculation of cost effectiveness on either the New Starts/Small Starts share or Federal share of the project cost instead of the current practice of basing cost effectiveness on the total project cost, with thirteen comments stating a preference for the New Starts or Small Starts share and three comments expressing support for the Federal share. Comments said FTA's current approach is burdensome to communities with stringent local requirements because those communities must include locally funded project elements in their projects that are not necessary for the basic functioning of the project. Comments said the costs for these locally required and locally funded elements are

factored into the cost effectiveness calculation, which makes their cost effectiveness rating ''worse'' than the ratings for projects in communities that do not have stringent local requirements. Comments also said this approach would enable communities to build projects that best serve their local needs because project elements funded with local sources would be excluded from the calculation of cost effectiveness. Some comments also said this approach would provide an incentive for project sponsors to provide a higher local funding share, allowing Federal dollars to be distributed to a larger number of projects than would be the case under FTA's current approach. They stated this approach would reduce the likelihood that project sponsors would need to conduct ''value engineering'' in ways that may reduce the full benefit of the project in order to achieve an ''acceptable'' cost effectiveness rating. Some comments said this approach would enable project sponsors to easily calculate the cost effectiveness for the project based on the level of local funding that they provide to the project.

Some comments stated FTA should change the current policy of basing cost effectiveness on total project cost and instead exclude certain costs from the calculation of cost effectiveness for various reasons. One comment stated the cost effectiveness calculation should only include the costs necessary for the functioning of the project, while another argued FTA should deduct from the cost effectiveness calculation the total or incremental costs of project ''upgrades'' that support important Federal objectives but do not produce additional ridership or user benefits or benefits associated with the other project justification criteria. Two comments said the cost included in the cost effectiveness calculation should be reduced by the amount of private sector contributions to the project, with one suggesting FTA only deduct costs provided by real estate developers and businesses that contribute funds because they realize the economic value created at the project's station areas. The comment said FTA should not deduct costs that apply to public-private partnerships in cases where the private sector partner provides construction funding in exchange for future availability payments from the public agency. Another comment said FTA could create a meaningful incentive by specifying that the private capital or public-private partnership must have a positive impact on the project's evaluation and rating in order to be worth counting in the evaluation process. One comment said FTA should limit the costs included in the calculation of cost effectiveness to operating costs, including environmental costs and benefits, stating the current capital and operating costs included in the calculation of cost effectiveness are focused on short-term costs at the expense of long-term environmental and economic benefits. Along similar lines, another comment said FTA should deduct costs associated with the use of new energy saving technologies from the calculation of cost effectiveness.

Two comments supported FTA's current approach of basing cost effectiveness on the total project cost, stating that a focus on only Federal costs would cause a ''race to the bottom'' as projects try to improve the rating by reducing scope to lower the Federal share. The comments also stated many New Starts projects are major capital investments and require robust levels of Federal funding in order to be built. Another comment argued that reaching agreement with FTA on the cost of ''betterments'' would be complex and time-consuming, especially when agencies are seeking to incorporate ''green'' technologies into their routine practices. The same comment stated that comparing user benefits to the Federally-funded portion of a project could create other complications because agencies may attempt to apply Federal funds to the standardized cost categories with the longest useful life.

Response: FTA does not agree the cost effectiveness measure should be calculated based on either the New Starts or Small Starts share or the total Federal share. Instead, FTA believes the total project cost should be the basis for the calculation, with allowances for ''betterments'' to be excluded (as noted above). To allow a project to potentially obtain a satisfactory project justification rating simply by reducing the Federal share mixes an evaluation of project merit with an evaluation of the local financial commitment to the project. Further, it could permit an otherwise poorly performing project to receive an adequate rating. FTA believes it is possible, however, to exclude certain locally-required or preferred project elements from the cost calculation. FTA believes allowing ''betterments'' (those elements that go beyond what is needed for the basic functioning of the project) to be excluded from the cost side of the cost effectiveness calculation is reasonable. FTA understands it may be challenging to identify exactly what constitutes a ''betterment,'' but believes that guidelines or parameters can be established to help with this. FTA believes incentives for providing higher local funding shares should be considered in the local financial commitment criteria evaluation, not the project justification criteria evaluation. FTA agrees it is important that a project sponsor not delete necessary project elements in order to achieve an acceptable cost effectiveness rating, but believes this can be avoided through guidance defining necessary elements (along with what might be considered a betterment) and by thoroughly reviewing cost estimates as part of FTA's project management oversight.

FTA agrees the costs used in calculating cost effectiveness can be limited to those necessary to produce the project's primary functions. This can be done to avoid counting the costs of various locally-derived ''betterments'' and the costs of achieving certain Federal policy objectives, so long as these costs are not being borne by New Starts/Small Starts or other Federal funds. These costs could include things like additional features to provide extra pedestrian access to surrounding development, aesthetically-oriented design features, or features to allow for LEED certification of project facilities. FTA agrees such features often do not produce the primary transportation benefits being evaluated in assessing cost effectiveness, but nonetheless produce desirable outcomes. To count such costs in the cost effectiveness measure would provide a disincentive to include such project features. FTA is interested in receiving comment on the kinds of betterments that should be excluded from the cost side of the cost effectiveness calculation.

FTA does not believe it is appropriate to deduct private contributions to the project from the cost effectiveness measure for the same reasons stated above regarding calculating cost effectiveness based on the New Starts or Federal share alone. If a private developer contributes funds to a specific feature, such as an enhanced pedestrian linkage to a developer's project site, then it would make sense to delete those costs to the extent that the feature is not necessary for the achievement of the project's ridership or other benefits included in the justification measures. FTA agrees private equity contributions that will later be repaid through availability payments or other reimbursement by the project sponsor should be included in the costs used to calculate cost effectiveness. FTA does not agree that only operating costs should be part of the costs included in the cost effectiveness calculation. Both capital and operating costs are part of

the overall investment being evaluated. FTA believes it may be appropriate to deduct the costs of various energy saving features to the extent they are not necessary for the basic functionality of the project.

FTA agrees using total project costs, net of betterments (i.e., subtracting certain elements from the cost), rather than only Federal funding, is appropriate since otherwise a major portion of project costs would be excluded. FTA agrees there will be some complexity involved in identifying ''betterments,'' but on balance it is worth the effort to assure that disincentives to such features are not an inadvertent part of the evaluation process. Further, FTA believes it is more appropriate to reward projects that contribute a higher non-New Starts share of funding in the evaluation of local financial commitment. That way, the evaluation of project justification will be appropriately focused on the merits of the project itself, regardless of funding source. The overall evaluation of the project's worthiness is the combination of the project justification and local financial commitment rating that will include an accounting of the degree to which additional local resources are being brought to bear on the project.

4. Forecasting Methods

Comment: FTA received a number of comments on the methods used to forecast ridership to calculate travel time savings, which is the current measure FTA uses in the calculation of cost effectiveness and mobility. Comments expressed concern that projects are designed to meet the projected ridership forecasts, but that actual ridership can sometimes surpass projections leaving the project under-developed. The comment noted projects facing this situation are then required to undergo costly retrofits to accommodate actual ridership. One comment suggested that if travel time savings is retained as the measure, the forecasting methods behind the measure should be improved. Similarly, another comment suggested the creation of a national standard or approach to transit ridership forecasting

Response: FTA agrees these projects are long-term investments and should be built to accommodate long-term demand, which is difficult to predict. However, calculating cost effectiveness is a necessary part of the evaluation process, as required by statute.

FTA agrees with the need for improved and simplified forecasting methods. FTA is proposing a simplified measure of effectiveness and the use of approaches that are easier to apply, including an FTA-developed standard national model to predict the number of trips on a proposed project.

Comment: Other comments suggested various ways of improving travel forecasts and noted concerns about consultants having a conflict of interest that leads them to inflate ridership forecasts. Comments suggested FTA require better documentation of ridership projections, such as origin-destination surveys of current users of existing transit systems in the region and origin-destination surveys of current automobile drivers to determine the congestion impacts when existing roadways are altered to allow dedicated lanes for buses in a bus rapid transit (BRT) system. Another comment suggested FTA create a new FTA-specific debarment process that would prohibit a firm that submitted false or misleading ridership forecasts to FTA from submitting additional information for the next three years. Another comment stated that in markets without choice riders (riders that choose transit over driving even though they have a car or other travel options available to them) historically, initial choice ridership may come from special events such as college and professional sports games, holiday parades, etc. The comment went on to say FTA should develop tools to allow projects to better model trips generated by those special events.

Response: FTA does not agree consultants alone are the cause of inflated ridership forecasts. An over-reliance on a single metric, whatever it may be, can provide an incentive for all parties involved, including consultants and project sponsors, to overinflate the numbers. Ultimately ridership forecasts and all data submitted to FTA about the proposed project are the responsibility of project sponsors.

FTA agrees the data on which forecasting models are based can be improved and already requires that models be calibrated based on recent rider surveys. FTA will continue to evaluate the quality of the ridership forecasts submitted by project sponsors before accepting them as part of any evaluation process. FTA is proposing simplified forecasting methods, including an FTA-developed national model to predict ridership on the proposed project. FTA notes that it already has tools available to deal with special events and other trip generators, which project sponsors now currently employ.

With respect to a debarment process, the existing government-wide debarment process at 2 CFR part 180, supplemented with the DOT rule at 2 CFR part 1200 would allow FTA to suspend or debar any entity for numerous reasons. Conviction for making false statements is listed as one of the bases for debarment (see 2 CFR 180.800(a)(3)).

Comment: One theme among comments on travel forecasting was the extent to which ridership forecasts take into account land use changes expected in the project area. One comment stated some applications of direct transit ridership models have been demonstrated in the field, and may offer a more accurate alternative to forecasting ridership than regional travel demand models built primarily around forecasting auto trips. The comment argued that such models offer the ability to consider the effect of fine grained land use characteristics around stations that may increase ridership—higher quality pedestrian environments, a mix of land use types, key destinations, and residential density. Other comments stated FTA should work with project sponsors, MPOs, and others to improve modeling technology to more accurately recognize land use-related variables and different land use distribution patterns, with an aim toward incorporating induced land development into forecasts. Other comments specifically suggested a standard methodology for projected land use changes in furtherance of better ridership forecasting.

Response: FTA agrees it is important to fully account for the land use changes that occur in project areas to the extent possible, and FTA encourages use of the most accurate tools available. To avoid increasing the burden on project sponsors, FTA prefers that existing tools available in the project area be the primary basis for analysis. Use of new tools may require expensive development and calibration that may not be worth the time and money for the enhanced precision that might result. Although finer grained analysis may be helpful in producing more accurate forecasts, in general FTA needs only to be assured that the project is justified according to broad criteria for which existing tools have proved sufficient. Project sponsors who feel the need for more precise forecasts to justify projects at the local level are always free to pursue enhanced models on their own.

Comment: Some comments suggested alternative methods for developing travel forecasts, with one comment expressing appreciation that FTA already allows project sponsors to use alternative methods in special cases. One such comment stated transit agencies should be required to use the

current travel forecasting model of the MPO for all estimates of ridership, revenue and ridership-related costs, and that a transit agency should under no circumstances develop its own model for estimating patronage for any proposed new transit project. That comment suggested any modifications of the MPO model should be clearly documented and certified by the MPO. Another comment stated FTA should require MPOs, especially those in regions with significant transit investments in place, to maintain an updated transit model capable of meeting the rigors of a New Starts evaluation.

Response: FTA believes it should provide project sponsors with flexibility in determining what methods to use to develop travel forecasts. FTA will continue to allow use of alternative forecasting approaches in certain cases, and is proposing a simplified, FTA-developed national model. FTA does not believe it is appropriate or necessary to mandate use of such specific models, or to require MPOs to have in place models appropriate for modeling New Starts project impacts. In some cases the models may not be sensitive to the kind of changes in travel that arise from a major transit investment because they are usually designed to produce travel forecasts in support of an area's metropolitan transportation plan and often focus on mainly regional ridership totals rather than corridor or station area levels. In addition, most MPOs will be called on to forecast New Starts project ridership only on rare occasions. In any case, FTA will continue to work with project sponsors to assure that the models used are appropriate and the results as accurate as possible.

Comment: Some comments stated there is too much time, cost, and effort spent on travel modeling and ridership estimating and the process often is contentious. These comments suggested other approaches might be used instead to remedy this problem. One comment suggested a Delphi-based approach that uses the model as one of a number of methods to generate information that is then reviewed by a panel of local travel experts for consensus. Another suggested a transit forecasting model similar to the Aggregate Rail Ridership Forecasting (ARRF), arguing that ARRF is proving to be a more accurate generator of ridership forecasts than any other model. Other comments suggested simple, spreadsheet-based modeling tools using existing data sources, such as data obtained from Automatic Vehicle Locators installed on existing transit vehicles in the corridor data, as the basis for quantifying improvements in service reliability that would occur with the proposed project. One other comment suggested the use of sketch planning methods used to predict park-and-ride lot utilization, transit route ridership, and other travel data along with the requirement that the forecaster focus on results and making them plausible rather than expending large amounts of time and resources to figure out why the model is ''misbehaving.''

Response: FTA agrees the level of effort required for producing and verifying the acceptability of travel forecasts should be reduced. FTA does not believe a Delphi approach is reasonable, but rather believes a model-based approach is more appropriate, since it can take into account more aspects of known travel behavior in a quantitative manner. However, the use of sketch-planning techniques such as ARRF has merit. FTA believes its proposal to use project trips as the effectiveness measure for mobility in the calculation of cost effectiveness supports the use of simpler forecasting methods for project sponsors. FTA agrees using simplified methods based on existing data for a variety of measures makes sense and often can produce better results than relying on complex travel models that may be difficult to understand.

Comment: FTA also received a number of comments on forecasting various aspects of automobile travel, with some arguing for use of regression techniques for estimating vehicle miles travelled (VMT) and others suggesting FTA sponsor research on increases in automobile operating costs. Others simply suggested developing a minimum standard for highway models to improve comparisons in multimodal contexts. Some comments favored increased funding to improve estimates of benefits to highway users from transit projects.

Response: FTA believes simple measures for assessing the impacts of a proposed transit investment on automobile travel have merit. FTA will continue to explore how to produce such measurements most effectively. FTA does not believe minimum standards for highway models are needed, although it believes continued research in this area would be appropriate.

Comment: A number of comments were also submitted concerning details of the measurement of travel time savings, the current measure FTA uses in calculating mobility and cost effectiveness. Comments expressed concerns about the reliability of forecasts in general, and urged the use of ridership surveys to improve ridership forecasts. Other comments stated mode-specific constants (which assign a different weight to time spent on various modes) should be replaced with improved transportation demand model specifications, including quality of service variables, stating there is no evidence that traveler preference is necessarily linked to mode. Some comments expressed concern about the interface of non-motorized trips and transit in travel models, arguing most regional models do not fully consider the impact on ridership of quality bicycle and pedestrian networks, thereby penalizing transit agencies that include the costs of improved sidewalks or bikeways in the proposed transit investment. Another comment stated modeling parameters seem to give greater weight to ''drive-to-transit'' access rather than ''walk to transit'' or ''bus to transit'' access, and that this approach fails to capture the benefits accruing to communities with transit supportive land use policies.

Response: FTA continues to believe travel time savings are an important benefit of major transit investments, but it is clear it is difficult to produce reliable estimates of such time savings. Accordingly, FTA proposes to use project trips as its mobility measure, which should be easier to forecast while still producing a good indication of project merit. FTA notes improvements in accessibility, which are related to the travel time savings produced by a proposed project, are an important factor in changes in land use and economic development due to the project. Hence, even if a different measure of effectiveness is used in calculating cost effectiveness, some indication of the reduction in travel time will be reflected in some of the other project justification measures.

FTA agrees rider surveys are an important tool in developing good estimates of current travel behavior and will continue to support their use for model calibration. FTA agrees mode specific constants are an imperfect way to measure travel mode changes and agrees it is the attributes of the mode that cause riders to change. However, FTA believes that mode specific constants remain a good proxy for calibrated factors in travel demand models (i.e., mode specific constants allow FTA to account for travel amenities that may differ between different types of transit projects, such as the differences between traveling on a light rail vehicle or a bus). FTA agrees many regional models are not sensitive to fine-grained factors such as non-motorized access to transit. But FTA does take account of improvements to

transit walk access in the way the benefits of the transit investments are considered and will continue to explore methods to better evaluate their magnitude.

Inclusion of Benefits in Cost Effectiveness

The following is a summary of comments related to three separate ANPRM questions on cost effectiveness and one question each on environmental benefits and economic development. The questions from the ANPRM are included at the beginning for reference.

Cost Effectiveness Question 2: ''What, if any, additional benefits such as environmental benefits, equity considerations (e.g., the social benefits of low-income ridership), and benefits of economic development attributed to a specific project could FTA include in the measure of cost effectiveness? What specific benefits should be included in the calculation of cost effectiveness?''

Cost Effectiveness Question 3: ''If you believe that FTA should include other benefits in the measure of cost effectiveness, how can FTA best quantify those benefits? Please include specifics on how FTA would quantify and measure these benefits.''

Cost Effectiveness Question 5 (part B): ''Should FTA consider additional benefit categories such as convenience for riders, reduced congestion, reduced travel time as a result of reduced congestion, reduction in the number of accidents due to reduced congestion, fuel costs (or other variable cost) savings for individuals who would be using the projects and/or the benefit to national security of additional transportation options? If so, how should these be measured?''

Environmental Benefits Question 8: ''Should environmental benefits be included in the cost effectiveness measure? How can environmental benefits be compared across projects, and incorporated into FTA funding decisions?''

Economic Development Question 10: ''Should economic development be a part of the cost effectiveness measure?''

Comment: Numerous comments stated the cost effectiveness criterion should include a fuller range of benefits, with some comments stating a preference for certain benefits, as explained below. Some comments supported inclusion of non-transportation benefits (discussed below in response to ANPRM Questions 2 and 3 on cost effectiveness, ANPRM Question 8 on environmental benefits, and ANPRM Question 10 on economic development) and others supported inclusion of additional transportation-related benefits (discussed below in response to ANPRM Question 5 on cost effectiveness). One comment stated generally that including a fuller range of benefits would improve services for minority and low-income populations. Another comment stated cost effectiveness should account for all benefits of a transit project. Some comments that proposed cost-benefit analysis suggested specific measures for use in that assessment framework. One comment recommended consideration of system design and operational features that support state of good repair, land use, and equity goals since such features can support better service but are often value-engineered out of projects. One comment proposed that a cost effectiveness rating for a full line be applied to a minimum operable segment (MOS) if a financial plan is in place for the full line based on an argument that MOSs often have higher costs relative to benefits.

Other comments stated no additional benefits should be included in the criterion for cost effectiveness. A couple of comments indicated other benefits are already addressed and weighted appropriately under other project justification criteria; one of these comments noted the current measure already captures certain transportation benefits beyond user benefits, such as service reliability and relief of transit congestion. Three comments expressed concern that additional benefits would make cost effectiveness more burdensome to measure or complex, while two others recommended additional research to determine how to quantify any additional benefits before including them in the cost effectiveness criterion. A few comments noted that including additional factors in the cost effectiveness criterion could complicate comparison of projects' benefits. A couple of comments suggested additional benefits are difficult to measure, with one specifically stating that capturing, measuring, and quantifying transit benefits in a way that is simple and nationally applicable is currently beyond the capabilities of agencies and sponsors. Another stated there are few tools today to measure the triple bottom line (economics, environment, and social equity), but they are in the process of being developed. Another argued cost effectiveness should remain as it is until accurate information is available that clearly defines a quantifiable non-mobility and/or congestion relief criteria that can evaluate the specific benefit between projects.

Some comments provided criticism of the existing measure for cost effectiveness. One stated the current cost effectiveness measure is biased against certain modes (e.g., streetcars and urban circulators), and another comment suggested that incorporating livability principles into the other project justification criteria could remedy this. One comment argued the existing measure seems to give greater weight or preference for benefits resulting from drive access than to bus or walk access to the transit system. Another stated the current measure of cost effectiveness favors long trips in metropolitan areas that are not compact and where there is more opportunity to save travel time over longer distances.

Response: FTA agrees that while there might be merit to including a wider range of benefits in the measure of cost effectiveness, on balance it is more appropriate to address these other benefits in the other evaluation criteria rather than trying to incorporate them into cost effectiveness. FTA is not convinced an effort should be made to include all benefits in a single measure since cost effectiveness is only one of six project justification criteria specified in law. In particular, certain benefits are not easily combined into a cost effectiveness measure but can be better addressed in the other criteria. FTA believes state of good repair goals are better assessed in the review of local financial commitment since they relate to whether a project sponsor has adequate resources to recapitalize the existing system in addition to constructing the new project, rather than serving as a reflection of the performance of the project itself, which is more rightly the basis on which project justification should be judged. Land use and equity considerations can be accounted for in other criteria. FTA continues to believe it should judge each operable segment on its own independent utility, since it is appropriate for FTA to evaluate the immediate investment being considered for funding.

FTA agrees other benefits should be left out of the cost effectiveness measure. Cost effectiveness does not have to be the only measure that scales project benefits to costs. FTA is particularly sensitive to the concern that including additional benefits in the measure could increase the burden on project sponsors since it would add considerably to the complexity of the measure. Thus, FTA is proposing that a simpler measure of mobility (trips) be

compared to costs. Simplifying the measure for mobility should address concerns about the burden on sponsors. A project sponsor is not required to calculate the value of additional benefits, but can do so at its option as a part of the other measures rather than in the cost-effectiveness measure. FTA agrees that additional research on how to quantify such benefits would be productive. There are Transit Cooperative Research Program projects underway that may provide useful information. FTA plans to conduct additional work as needed to assure sponsors have usable tools. FTA does not believe it is beyond the capabilities of current tools to assess these benefits, but believes more work is needed to improve these tools and make them more readily usable. Nonetheless, FTA is convinced the currently available tools are sufficiently accurate for their results to be used in the analysis.

FTA agrees the current measure of cost effectiveness can be improved and is proposing a revised measure. FTA believes that having improved measures for economic development effects and environmental benefits will make for a more complete assessment of project merit, particularly when the entire range of project justification criteria are evaluated and weighted comparably, as required by law. FTA does not agree the current measure favors modes with drive access rather than walk or bus access. Under the current measure, savings in travel time are based on weightings that reflect travelers' perceptions that out-of-vehicle travel time is more onerous than in-vehicle travel time. Thus, since walk time is actually weighted more than in-vehicle time, projects that improve walk access actually score better on the current measure. FTA agrees the current measure favors projects that save large amounts of travel time on long trips, simply because there are more opportunities for travel time savings.

1. Inclusion of Non-Transportation Benefits in Cost Effectiveness

The following is a summary of non-transportation benefits proposed for inclusion in the cost effectiveness criterion.

a. Public Health and Environmental Benefits

Comment: Several comments supported inclusion of public health benefits under the cost effectiveness criterion, with one noting health benefits constitute one in a series of community benefits associated with reduced automobile use but not currently captured under cost effectiveness. A few of these comments recommended FTA use public health or health care cost savings as a measure. Another noted ''the limits of information available to public transit agencies themselves to create this analysis'' would need to be considered if FTA elects to develop a public health measure.

Numerous comments suggested environmental benefits be included in cost effectiveness, either generally (i.e., as an affirmative response to Environmental Benefits Question Number 8) or with support for particular benefits.

A large number of comments endorsed inclusion of environmental benefits in FTA's cost effectiveness criterion without specifying a type of benefit. A few of these proposed the cost effectiveness measure capture project benefits beyond travel time savings, and one stated the current cost effectiveness measure is subjective. One comment asserted environmental sustainability, along with economic factors and social equity, is more critical than mobility improvements, with another comment suggesting inclusion of environmental benefits would help FTA identify and prioritize projects with the best long-term outcomes.

Response: FTA agrees public health benefits should be considered in evaluating New Starts projects. FTA believes they belong primarily under the environmental benefits criterion. FTA will propose in policy guidance that they be measured once a methodology for doing so has been developed. FTA agrees that valuing such benefits can be complex.

FTA does not believe its current or proposed measure of cost effectiveness is in any way ''subjective,'' but rather an effort to quantify benefits and costs and compare the two. Although FTA believes that environmental sustainability is important, mobility and accessibility are the primary benefits of transportation investments. FTA does not agree that incorporating environmental benefits in the cost effectiveness measure is an appropriate way to ensure good investments producing a wide range of important long-term outcomes are supported, mainly because it would complicate the measure. Instead, FTA believes the environmental benefits criterion is the appropriate place to examine these benefits and is proposing they be compared to cost under that criterion. Recognizing the importance of a multiple measure approach to project evaluation, FTA is proposing that environmental benefits receive a comparable weight to cost effectiveness in the evaluation of project justification.

Comment: A number of comments proposed measures of environmental benefits. These are discussed in the section on environmental benefits. Of these comments, one suggested VMT reductions due to higher density development receive half of the weight assigned to cost effectiveness. Finally, one comment suggested the multiplier for non-travel time benefits be increased (from two to two and a half) if FTA does not adopt another method for incorporating environmental benefits.

A couple of comments proposed techniques to evaluate environmental benefits as part of cost effectiveness, but did not suggest measures. One recommended a cost-benefit analysis of proposed environmental technologies given that certain ''green'' technologies can be more expensive than ''older established technologies.'' Another proposed environmental features of a project be subject to cost-benefit analysis, either individually or in combination with all other project costs and benefits, as part of a broader definition of cost effectiveness and suggested replacement of the current cost effectiveness measure with cost-benefit analysis.

Response: FTA believes certain environmental effects resulting from implementation of the project (which can be estimated based on estimated VMT changes) should be accounted for in the measure of environmental benefits. In addition, FTA proposes that at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA is proposing to replace its current approach in which the thresholds for the various ratings assigned to travel time savings are developed by simply doubling the value of calculated travel time savings so as to account directly for the environmental benefits under the environmental benefits criterion.

FTA believes the decision on whether or not to implement certain ''green'' technologies should be made by local decision-makers and does not intend to propose any specific requirements. However, FTA believes it is appropriate to exclude the costs of such ''betterments'' from the calculation of cost effectiveness to avoid creating a disincentive to the application of such technologies.

Comment: Several comments recommended FTA evaluate air pollution or greenhouse gas emissions reductions under the cost effectiveness criterion, with about half citing air pollution reductions as a broader community and efficiency benefit associated with decreased automobile use. A few comments proposed specific measures: one suggested FTA measure costs avoided due to reduced emissions; another suggested FTA examine project cost per ton of abated emissions, with emissions reductions offset by the effects of vehicular cold starts and electricity production for transit vehicle propulsion; a third suggested FTA assign a monetary value to each ton of abated emissions; and two others suggested the financial benefits of climate change impact reductions be accounted for in cost effectiveness.

Response: FTA believes air pollution and greenhouse gas reductions are better accounted for under the environmental benefits criterion rather than as part of the cost effectiveness criterion. FTA believes the best approach is to estimate these benefits using standardized valuations per change in VMT, monetize them and compare them to the annualized capital and operating cost of the proposed project in the environmental benefits criterion.

Comment: Several comments advocated inclusion of energy conservation in cost effectiveness. Of these, a couple emphasized incorporation of Leadership in Energy and Environmental Design (LEED) components and technologies. One comment cited energy conservation as a community benefit associated with less automobile use. Another noted encouragement of energy-saving LEED components would be consistent with the Administration's livability and sustainability goals.

One comment suggested measuring project cost per British Thermal Units (BTU) of energy saved, and another proposed offering ''some level of credit'' against the Federal share for inclusion of LEED components. A couple of comments proposed identical measures for cost effectiveness and environmental benefits, namely projected VMT reductions and mode split changes, but did not mention particular environmental benefits to be assessed through these measures. These comments asserted that reductions in energy use and emissions should be key goals of any transit project.

One comment suggested projects receive cost effectiveness credit for only ''ancillary'' environmental benefits associated with mandatory project components in order to maintain the New Starts program's focus on funding transit improvements.

One comment suggested FTA incorporate long-term efficiency benefits and reductions in life-cycle costs associated with environmental technologies into the cost effectiveness measure so as to avoid penalizing projects with higher-cost, environmentally beneficial elements.

Response: FTA believes energy conservation should be included in the environmental benefits criterion, rather than in cost effectiveness. To do so, FTA is proposing to calculate the monetary value of the energy savings that come from changes in VMT using standardized values. FTA notes a significant part of the benefits that come from reducing energy use are accounted for by the resulting reduction in pollutant and greenhouse gas emissions. To avoid double counting, the monetary value of energy conservation will be factored down by some percentage specified by FTA in future policy guidance. In addition, FTA believes it may be appropriate to exclude from the cost effectiveness calculation the additional costs of energy efficient features of the project. These features do not necessarily produce the changes in VMT that form the basis for the mobility benefits included in the measure. Thus, subtracting the costs of these energy efficient features from the cost calculation will avoid having the cost effectiveness measure produce a disincentive to the adoption of such features. FTA notes although energy efficiency and reductions in emissions are important goals for investments in transit, improving mobility and accessibility, and enhancing economic development are also important.

Comment: A few comments discussed but did not explicitly support incorporation of environmental benefits into cost effectiveness. Some of these noted cost effectiveness could ''potentially'' comprise all other New Starts and Small Starts project justification criteria, including environmental benefits. Another recommended the cost effectiveness measure be left as is for now, but noted the measure ''could eventually be strengthened'' through direct inclusion of environmental benefits.

A large number of comments specifically discouraged FTA from including environmental benefits in the cost effectiveness measure for a number of reasons. Some of these comments noted environmental benefits are adequately recognized as a separate criterion. A couple of these comments observed that separate consideration of environmental benefits permits easier comparisons of projects. Others expressed concern that inclusion of environmental benefits would make the cost effectiveness measure more complicated and challenging to explain. Still others observed that quantifying environmental benefits may be challenging, with one comment recommending cost effectiveness remain focused on transportation benefits.

Response: FTA believes it is not appropriate to include environmental benefits in the cost effectiveness measure. The cost effectiveness measure does not have to be the only measure that compares benefits and costs. Project-specific environmental benefits can estimated, monetized, and compared to the annualized capital and operating cost of the proposed project in the environmental benefits criterion. FTA agrees with a multiple measure approach to evaluating whether a project is justified. While mobility benefits are the primary reason for making a transit investment, they are not the only benefits. Providing for a more robust measure of environmental benefits will assure these other benefits are accounted for with an approach that will involve minor effort by the project sponsor beyond calculating the change in VMT per guidelines that FTA will establish in policy guidance.

b. Economic Development

Comment: Numerous comments supported consideration of at least one facet of economic development in the cost effectiveness measure, either through an affirmative response to Economic Development Question 10 or discussion of particular factors or benefits. A large number of comments endorsed inclusion of economic development effects in FTA's cost effectiveness criterion without specifying factors or benefits. A number of reasons were given for supporting inclusion of economic development effects, including: The need to capture project benefits beyond travel time savings; the fact that current modeling procedures for Small Starts projects do not address the economic impact of transit use or ''site development for transit;'' that economic development effects is a ''key factor overall'' that should be considered as part of cost effectiveness; and finally, that economic development is the primary reason for transportation investments and potentially more critical to measure than mobility benefits.

A couple of comments proposed techniques to account for economic development effects in the cost effectiveness calculation. One comment suggested that projects that spur

economic development receive cost effectiveness credit. The other proposed a project's economic development effects be subject to cost-benefit analysis, either individually or in combination with all other project costs and benefits, as part of a broader definition of cost effectiveness and replacement of the measure with a full cost-benefit analysis. One other comment recommended FTA require project sponsors to generate matching funds through value capture.

A number of additional comments offered general support for including economic development in the cost effectiveness measure and noted particular economic development effects or measures FTA should recognize: Agglomeration benefits (i.e., the benefits from land uses locating near each other and a transit project's ability to generate additional retail options near neighborhoods that are experiencing disinvestment). Some of these comments recommended approaches to quantify economic development effects as part of the cost effectiveness measure. One proposed using a forthcoming index from the Brookings Institution, Harvard JFK School of Government, and the Urban Land Institute to measure the economic benefit of walkable environments. The other proposed a larger multiplier for non-travel time benefits (two and a half instead of two) in the cost effectiveness thresholds calculation if another method to incorporate economic development effects is not devised.

Response: FTA agrees economic development effects should be considered, but believes it is better to consider them under the economic development criterion rather than under cost-effectiveness. In particular, FTA agrees adding economic development effects to the cost effectiveness measure would directly and explicitly capture a wider range of benefits than just mobility, but FTA also recognizes that there are significant challenges to estimating these effects. Thus, FTA is proposing that at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

Because FTA's proposed approach is optional, it would not overly burden project sponsors with difficult and time consuming analytical requirements. FTA does not believe it is necessary to perform a separate analysis of economic development costs and benefits in order to make an informed funding decision. It may be appropriate at some future point to convert the entire New and Small Starts project evaluation framework to a full cost-benefit analysis, but for the present, FTA does not deem this technique to be sufficiently mature in terms of valuing costs and benefits to warrant such conversion at this time.

FTA agrees agglomeration effects are a key benefit and is using this as a key concept in how it is proposing to establish a measure of economic development. Retail opportunities are only one part of the kind of development that might occur around a transit investment. Ultimately, FTA believes the primary benefit of a public transportation investment that can be most readily quantified and monetized is the improvement in various environmental factors coming from denser development that can occur around a transit investment. But the amount of development can be very difficult to forecast. Thus, FTA is proposing to allow project sponsors to develop scenario-based estimates of these effects, at their option, for measurement in the economic development effects criterion. The indirect changes in VMT resulting from the estimated changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. Once better measures for the agglomeration effects are developed, FTA will propose to allow project sponsors to also add the economic effects due to that agglomeration in calculating economic development benefits.

As noted above, FTA is changing its current approach for developing the thresholds for assigning cost effectiveness ratings. FTA is proposing to explicitly include economic development effects in that measure rather than simply doubling the calculated travel time savings to account for these and other benefits in cost effectiveness, as is now its practice.

Comments: A number of comments proposed that FTA consider a transit project's ability to foster transit-supportive land uses, higher densities, and mixed-use development as part of the cost effectiveness measure (some of these comments opposed integration of economic development into cost effectiveness in Economic Development question 10). One comment noted dense land uses and convenient pedestrian and bicycle access around transit facilities would ultimately yield greater health, environmental, and travel benefits than short-term mode shifts to transit. Another indicated such development constitutes a community benefit that is not currently captured.

Several comments proposed measures of land development benefits. Most of these proposed changes in average population and employment densities within a transit corridor or region; some also proposed evaluating percentages of households residing in single- versus multi-family housing units. One comment proposed comparing automobile trip generation and travel distance estimates between high-density station areas and ''average'' portions of a region, and another comment recommended value capture from development potential as well as land reuse and conservation opportunities. Another comment recommended FTA only consider increased land values from transit investments as part of cost effectiveness, as higher land values enable use of value capture mechanisms to offset Federal funding shares. One comment recommended consideration of increased employment and housing opportunities, and another comment proposed assessment of employment levels in downtown areas, with credit offered where regions have been successful in maintaining downtown employment.

One comment proposed a more qualitative assessment of cost effectiveness overall to recognize a project's economic goals, such as economic development and revitalization.

A small number of comments supported evaluating possible negative effects from development expected to result from implementation of transit. One comment suggested FTA discourage investments that exacerbate sprawl by primarily serving rural commuters. Another proposed benefit offsets for the social costs of redevelopment to existing communities, stating that transit projects and their development effects may displace residents and small businesses, and Uniform Relocation Assistance is not sufficient to cover relocation costs.

Response: FTA agrees that considering how well a project supports transit-supportive land use and higher densities should be part of the evaluation of project justification, but believes they are better addressed elsewhere than in cost effectiveness. As noted, FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the

annualized capital and operating cost of the project under the economic development criterion. In this way the benefits noted, such as enhanced pedestrian and bicycle access, and resultant reduced motor vehicle travel, can be captured.

FTA appreciates the various measures of land use development benefits proposed. Although changes in population and employment density might represent a benefit, they are really changes resulting from economic development. Further, it is the resulting change in vehicular travel that primarily produces environmental benefits. An approach that compares trip generation and travel distance in station areas with those outside station areas and then multiplies these rates by the amount of land use development that might occur in station areas could be useful in assessing the amount of reduced travel and related environmental benefits. Although value capture can be an important technique for producing the revenues needed to make a transit investment, increases in land values are likely to be very difficult to forecast or estimate. FTA does not believe a qualitative approach to cost effectiveness is sufficient to clearly distinguish project merit, particularly when there are specific quantitative measures that can be used.

FTA believes projects that support denser development are likely to rate higher and do better in FTA's evaluation. FTA is aware transit projects can often affect the affordability of housing around transit stations. But FTA believes it is more appropriate to take account of this problem in the measure of economic development rather than in cost effectiveness. FTA is proposing to whether there are policies and plans in place to maintain and or increase affordable housing around a proposed investment under the economic development criterion.

Comment: Several comments conditionally or tentatively supported inclusion of economic development effects into the cost effectiveness calculation. Some of these comments discussed, but did not explicitly support, incorporation of economic development factors into cost effectiveness. Some of these noted all other New Starts and Small Starts project justification criteria could ''potentially'' be folded into cost effectiveness; another proposed the cost effectiveness measure remain as is for now, but noted the measure ''could eventually be strengthened'' through direct inclusion of economic development.

A couple of comments proposed conditional inclusion of economic development effects in the cost effectiveness measure. One stated if economic development effects are included, costs (such as subsidies) should be as well, with the project's benefits compared at the metropolitan level with those of all potential alternatives. The other recommended economic development only be considered if it provides financial benefit to the project sponsor.

Response: FTA believes economic development effects are best addressed in their own criterion. Therefore, FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

FTA does not believe it is appropriate to require comparing a project's benefits with those of all alternatives to it. FTA's role is in assessing the merits of the project and reaching a decision on whether to recommend the project for funding. Whether or not economic development is financially beneficial to the project sponsor does not address the overall merits of the project. It is more important the benefits be evaluated, no matter who is the beneficiary.

Comment: A large number of comments urged FTA not to include economic development in the cost effectiveness measure. Most of these noted potential challenges in forecasting or quantifying economic development effects. Several noted the complexity of the cost effectiveness measure, either in its current form or with economic development effects added; four of these noted Congress intended for economic development to be assessed separately from cost effectiveness. A couple noted economic development effects are adequately addressed as a separate criterion. One observed that separate consideration of economic development effects permits easier comparisons of projects. One asserted transit projects only shift economic development that would have occurred elsewhere, rather than generating completely new development. One comment suggested different levels of analysis for cost effectiveness and economic development (i.e., project versus corridor or broader, respectively) should preclude the two from being combined. Lastly, another comment suggested FTA exclude means to an end, such as urban form, VMT reductions or vehicle ownership changes, from its cost effectiveness measure and focus only on outputs.

Response: FTA believes there are challenges to incorporating economic development effects in the cost effectiveness measure. FTA believes it is simpler and better to follow the multiple measure approach to project evaluation outlined in law. Thus, FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

The cost effectiveness measure would focus on one dimension of project-specific effectiveness—mobility. FTA disagrees that the shifting of development from one area to another due to implementation of a transit project does not actually produce a net benefit. By increasing the density of development, even if it only shifted from elsewhere in a region, a transit project can produce reductions of vehicular traffic and environmental benefits that can be included in a broadened measure of economic development. The changes in VMT resulting from economic development effects (agglomeration of development) can be estimated as can the resulting changes in pollutant emissions, energy use, and accidents and fatalities, and a monetary value calculated using standard factors. The monetary value can then be compared to the annualized capital and operating cost of the proposed project and used as on optional additional measure of economic development. FTA agrees outcomes are the most important issue in assessing project merit. By themselves, urban form, changes in VMT, or vehicle ownership are not as important as the resulting changes in pollutant emissions, energy use, or accidents and fatalities.

c. Land Use

Comment: Several comments recommended FTA consider transit-supportive plans or policies within the cost effectiveness measure. A couple of these suggested FTA award credit for the presence of state or regional plans that promote denser, mixed-use infill development, and others recommended that transit-supportive plans and policies that emphasize economic development and employment strategies receive ''significant weight'' in cost effectiveness evaluations. A number of comments proposed credit for complete-street, pedestrian, and bicycle plans for

station areas (one of these comments suggested that better access via non-motorized means will increase transit use and endorsed the San Francisco Bay Area Rapid Transit District's Access Hierarchy policies as a potential model for such plans). Several comments advocated that FTA consider parking policies, such as supply reductions and pricing at stations and in station areas as an element of cost effectiveness. As rationale, one comment cited the importance of parking policies on transit ridership as shown in various studies, while another noted that high parking supplies decrease development densities and increase walking distances. Another comment added that project sponsors should also be required to assess the opportunity costs of providing parking at stations.

A couple of comments recommended FTA reward project sponsors for holding charrette sessions during the planning process. These comments noted such sessions can help to build support for higher-density, mixed-use development and complete-street policies. One suggested charrette sessions would affirm support for automobile alternatives and provide direction on where the alternatives are needed. One comment recommended FTA award credit to projects with affordable housing incentives in place in station areas. The comment reasoned that better access to transit from affordable housing units would improve ridership and thus improve cost effectiveness.

Response: Although FTA believes transit supportive plans and policies are an important part of assuring the success of a project, FTA does not believe these policies should be part of the cost effectiveness measure. FTA believes review of these policies is better handled in the economic development effects criterion as is currently done, because these policies by themselves do not represent an outcome of the project. FTA believes it is more appropriate to focus the cost effectiveness criterion on the mobility performance of the project. Likewise, policies supporting non-motorized access and dealing with parking supply also represent contextual factors that may contribute to a project's success, rather than performance-based outcomes of the project. Thus, they are also better addressed as part of the economic development criterion, rather than in the cost effectiveness measure.

FTA believes charrette sessions may be a useful tool for project development, but that the process by which a project is developed should remain a local choice. FTA believes the evaluation and rating criteria should focus on the performance of the project and on the policies in place that support such performance. FTA believes affordable housing is an important issue, and is proposing that existing publically supported housing be considered under the land use criterion and the plans and policies to maintain or increase affordable housing be reviewed under the economic development effects criterion.

d. Local Support

Comment: Several comments encouraged FTA to recognize local support for a project in the cost effectiveness measure. As justification, some comments noted the significance of local financial commitment to a project, deeming such commitment equivalent to a ''regional vote of cost effectiveness'' and an indication of the project's importance to the local environment and economy. One comment proposed that mode be considered in determining whether a project can gain local support (this comment stated that rail projects can generate more local support than bus-based projects).

A couple of comments proposed measures for determining local support, such as documented support for the project from local officials and developers as well as local funding commitments such as revenue from tax-increment financing (TIF) districts.

Response: FTA believes it is more appropriate to assess the degree of local support for a project, from both public and private sources, in its evaluation of local financial commitment. FTA agrees local financial support is crucial to the success of a project, but believes it is more appropriate to focus the cost effectiveness measure on the performance of the project itself.

2. Inclusion of Additional Transportation Benefits in Cost Effectiveness

The following is a summary of additional transportation benefits and associated measures proposed for inclusion in the cost effectiveness criterion.

a. Transit Systems

Comment: A large number of comments recommended FTA consider other benefits to transit system users beyond the current ''user benefits'' measure (which is expressed as travel time saved). Approximately a third of these comments proposed that FTA consider transit capacity increases. Of these, a few focused on the improved reliability that results from core capacity increases on existing systems, with one citing load factors as a potential measure to identify where such capacity improvements are needed. One comment focused on rail vehicles' superior capacity to buses. Several comments recommended consideration of ridership at the corridor, regional, or system level. One advocated that ridership be the primary benefit measure in the calculation of cost effectiveness. As rationale, the comment stated FTA should encourage as many transit trips as possible regardless of length, and that the congestion relief benefits resulting from transit investments accrue at the regional level.

A few comments proposed FTA consider or analyze off-peak or all-day travel as part of the cost effectiveness measure, but did not specify what element(s) of travel should be incorporated. Another comment similarly proposed measuring travel time savings across a project or system's span of service.

Several comments proposed using other measures of transit use in the cost effectiveness calculation. One of these proposed using the project cost per passenger mile of mobility within a metropolitan area; one proposed measuring mode shifts to transit, and another proposed measuring estimated farebox recovery improvements.

A couple of comments suggested consideration of the transit investment's beneficial effects on other transit services. One of these proposed giving credit for connecting transit systems because of the ''increased efficiency'' that occurs with little investment. Another recommended consideration of ''network benefits,'' measured by the length of the system expansion as a percentage of the total transit network. A few comments proposed measuring connectivity with existing transit service through transfers.

One comment suggested FTA consider the efficacy of the fare-collection systems proposed for projects. The comment observed that fare evasion associated with proof-of-payment systems hampers cost effective operations.

One comment proposed FTA adopt a combination of quantitative and qualitative measures that ''reflect the unique characteristics of individual projects that will make those projects successful uses of Federal investments.''

Several comments discussed the question of whether to calculate cost effectiveness on a corridor or a regional scale. One comment stated that the average [regional] values have little meaning and are used by opponents of transit investments. Another comment

suggested the cost effectiveness of a transit project in one corridor in a region may be very high, while the cost effectiveness of a transit project in another corridor in the same region may be very low, but that the project with low cost effectiveness still has to be provided for mobility reasons. One comment stated requiring that benefits be calculated for the entire region will ensure the benefits in the corridor, such as ridership gains or economic development effects, are not offset by losses of benefits elsewhere in the urban area.

Response: FTA does not believe transit capacity increases should be included in the cost effectiveness measure. Capacity represents an output of a transit investment rather than an outcome. Increases in capacity can result in increased utilization, which is a better measure of effectiveness, but only if the capacity is provided in a way that is convenient for potential users. FTA believes that transit ridership is an excellent measure of effectiveness, and is proposing to use it as the primary transportation benefit measure for its cost effectiveness criterion. Estimating ridership is central to determining the number of vehicles that are needed, the length of trains, correctly sizing facilities including stations, maintenance facilities, etc. Increased ridership is linked to increases in the ancillary benefits of the transit investment, such as reduced highway congestion, vehicle emissions, and economic development.

FTA agrees both peak and off-peak ridership should be included in the cost effectiveness calculation and is proposing to use cost per trip on the project as the measure. FTA believes ridership is more useful than passenger miles in the cost effectiveness calculation. Many benefits come from simply increasing the number of passengers regardless of those passengers' trip length, such as reduced emissions due to vehicle cold starts. In addition, using passenger miles in the measure could insert an unintended bias against shorter, circulator-type projects as compared to commuter rail or heavy rail projects serving longer distances. Mode shifts to transit are part of the calculation of ridership. Improved farebox recovery is important, but may be more a feature of fare policies than of a major transit investment.

FTA believes the enhancements to other transit services in the region that may result from implementation of a proposed project are important, but are not as significant as measuring usage of the proposed project itself. FTA is proposing the environmental benefits measure capture the air quality and other environmental benefits of the change in transit use on a regional level. Thus, the enhancements gained elsewhere in the region will be captured in the environmental benefits criterion.

FTA does not believe the efficacy of the fare collection system is a performance based outcome that should be considered in the cost effectiveness measure. FTA's evaluation of the financial plan considers whether it includes a reasonable estimate of the fare revenue generated by the project.

FTA does not believe a combination of qualitative and quantitative measures for cost effectiveness is appropriate. Rather, a single quantitative measure will provide an objective basis on which to judge project merit.

FTA believes it is appropriate to calculate cost effectiveness based on the corridor in which the project is located. This will help focus attention on the project itself. Assessing project-related ridership is a good way to isolate the impacts of the project and to provide a basis for comparing projects around the country.

b. Transit Users

Comment: A number of comments proposed quantification of transit user experiences or consideration of additional types of user experiences as part of cost effectiveness. Some comments supported evaluation of riders' productivity while riding transit and three suggested quantifying or monetizing productivity. One comment observed this evaluation would provide more information about how people make their travel choices and the value of a transit investment, and another noted that more commuters are performing work during their commutes.

Several comments proposed elements of the transit passenger experience. A few of these comments focused on convenience, comfort, and other personal and social factors. Others focused on improved service attributes, such as increased frequency. Another comment recommended consideration of travel time reliability.

Response: FTA believes it is more appropriate to focus on usage of the project in the cost effectiveness calculation. Improvements in the travel experience are likely to produce increased ridership and thus will be captured by the proposed approach. Factors like comfort, convenience, frequency of service, and travel time reliability all factor into the number of riders attracted to the project.

c. Project Planning

Comment: Several comments proposed the inclusion of various measures of project planning elements in cost effectiveness. One comment recommended discouraging duplicate transit investments (such as parallel bus rapid transit and heavy rail lines), as overlapping projects may garner fewer riders and thus be less cost effective. One comment proposed that transit plans be consistent with transit market research, particularly with respect to travel time competitiveness, as the planning process needs to consider factors that can induce mode shifts in order for projects to be successful. Another comment proposed that projects including traffic signal priority receive cost effectiveness credit and that slow and circuitous alignments in downtown areas be discouraged.

Response: FTA believes the cost effectiveness measure should focus on the performance of the project itself, as reflected in the number of trips taken on the project. The existence of transit services competing with the proposed investment should affect the estimated ridership on the proposed project. Projects should be developed based on an understanding of local travel markets. Projects with traffic signal priority and without slow, circuitous routing should have higher travel speeds and result in additional ridership.

d. Access

Comment: A large number of comments proposed the cost effectiveness measure encompass access improvements to residential and employment areas. Approximately half of these comments specified types of access improvements to consider, suggesting access improvements to employment, services, or education, and special events.

A couple of comments provided rationale for including access improvements. One observed that access improvements are the type of benefit that can result from a transit project; another noted that such improvements help to reduce VMT. As justification for an employment-based measure, one comment noted job access is predictive of ridership and that employment data is readily available. Another comment justified evaluating accessibility in terms of capital cost given that approach's similarity to the structure of the current cost effectiveness measure.

A number of comments proposed specific measures of access improvements. Several proposed evaluating changes in the number or

regional share of residents or jobs within a certain radius of stations; a couple of these also recommended evaluating the project capital cost per additional household or job. A small number of comments proposed travel time based measures, with one centered on the distance that could be traveled by transit within a certain amount of time and the other on the project capital cost per additional household that would fall within a certain transit travel time of a large employment center. One comment recommended evaluating whether transit travel times between residential and employment concentrations are competitive with those of driving, and another suggested defining accessibility in terms of improved ability to reach destinations via transit. One comment recommended assessing the reduction in long-distance automobile travel associated with improved access.

One comment proposed that accessibility, in conjunction with mobility improvements, supplant the current cost effectiveness measure. Another comment suggested that accessibility be emphasized over mobility, as local access and circulation are more closely connected to livability. One comment pointed to an analysis done by a firm in Portland that identified a methodology for evaluating other project benefits due to changes in land use and economic development as well as enhanced accessibility.

One comment stated proper connections to destinations are obscured by the current cost effectiveness measure's focus on movement through, rather than arrival in, communities. The comment stated the arrival and connection piece is central to the benefits associated with reduced auto use.

Response: FTA believes improvements to both access and mobility are key features of a good transit investment. However, developing a good, easily calculated measure of access has proven challenging. Although it is relatively easy to specify a measure such as number of jobs within a specified travel time of a single location, creating a broader corridor or regional measure including calculations to and from multiple locations is more difficult and complex. FTA believes a measure focusing on project ridership will indirectly address access improvements since more people will ride a project that has enhanced access to jobs or other important activity centers.

FTA appreciates the suggestions made on ways to evaluate improvements in access. FTA agrees a measure that defines accessibility instead of mobility might be a better representation of the kind of benefits transit projects are intended to produce. As noted, however, it has proven very difficult to measure. Focusing on the way a transit project can enhance an individual's ability to get places, rather than just travel faster, is a desirable outcome of the evaluation process. FTA intends to continue to explore how best to do so.

e. Mobility Improvements

Comment: Several comments advocated that cost effectiveness encompass mobility benefits. Each comment endorsed consideration of mobility improvements under cost effectiveness, but did not specify particular benefits. One of these comments noted general mobility improvements may be more important than VMT reductions in transit-rich areas with low automobile use. Another comment recommended defining mobility as improvements in the ability to travel between destinations. Two comments proposed special-event ridership increases associated with an investment.

One comment proposed that mobility, in conjunction with accessibility improvements, supplant the current cost effectiveness measure. Another stated that mobility, not environmental benefits or economic development effects, should be a key project goal.

Response: As noted, FTA believes mobility and access improvements are important outcomes of transit investments. FTA also believes measuring the trips taken on a project can help capture the improvements in mobility that will occur, given that increases in utilization are likely to be the result of improved mobility. FTA notes that trips made on the project to attend special events (concerts, sports events, etc.) can be counted in the current measure of cost effectiveness. FTA is proposing to continue to allow inclusion of these trips.

FTA agrees mobility is an important outcome of a proposed investment, but notes that it is not the only benefit—changes in travel patterns due to a proposed project can produce significant environmental benefits. It is appropriate to consider them explicitly in the evaluation of project justification to improve the overall evaluation process and reduce disincentives to incorporating environmentally-sensitive features in the project.

f. Equity Benefits

Comment: A large number of comments proposed equity benefits be included in the cost effectiveness measure. Several of these comments supported consideration of social equity, with one centered on affordable housing and transportation options, noting that recent foreclosures disproportionately occurred in areas with high housing and transportation costs. One comment proposed FTA consider as measures a project's total cost impact on household budgets across income levels so as to capture differential impacts. Another comment proposed a forthcoming Brookings Institution—Harvard JFK School of Government—Urban Land Institute index to gauge the social equity of walkable environments.

A number of comments proposed consideration of benefits to persons with disabilities, senior citizens, and lower-income populations (sometimes called ''transit dependents,'' because some have no other transportation choice, such as an automobile, available to them). Approximately half of these suggested measuring the number of low-income households within a certain radius of stations. A few comments proposed measuring housing and transportation costs for transit dependents, including affordability improvements that result from a project in conjunction with affordable housing policies. One comment proposed evaluation of employment access improvements, both immediate and longer-term, for low- to moderate-income individuals. Finally, one comment recommended FTA develop qualitative measures to reflect the distinct nature of benefits to transit dependents.

One comment proposed both a cost effectiveness credit for transit projects that include retrofitting of existing stations for Americans with Disabilities Act (ADA) compliance and a requirement that projects not negatively affect existing bus service.

One comment proposed consideration of whether the project provides efficient school transportation.

One comment suggested FTA require projects include community labor agreements, community participation processes, and disadvantaged business set-asides.

Response: FTA agrees equity concerns are important in evaluating projects. FTA believes by giving added weight to trips taken by transit dependent riders, one aspect of equity can be addressed in its measure of cost effectiveness. Other aspects of equity can be addressed primarily in the other evaluation measures, rather than in cost effectiveness, because these concerns do not relate to the performance of the project. In particular, FTA believes the degree to which plans and policies

related to affordable housing are in place is better addressed in the economic development effects criterion, since changes in development patterns and land values lead to lack of affordable housing. Further, FTA is proposing that changes in access for transit dependent individuals be part of the mobility improvements measure. FTA believes the other proposed equity measures may be unnecessarily complex or difficult to understand, and are unlikely to produce any additional information about project merit that is superior to the simpler measure of project trips made by transit dependent riders.

FTA believes retrofitting for Americans with Disabilities Act compliance is not a measure of project performance, but rather a requirement for compliance with Federal law and regulation that should be addressed by the project sponsor whether or not they implement the proposed project. FTA notes the current approach to assessing local financial commitment includes an examination of whether the proposed project can be implemented without a detriment to the current level and quality of existing transit services. Furthermore, FTA notes that fare and service equity analyses are required by FTA's Title VI circular to ensure that disadvantaged populations are not adversely impacted.

FTA is prohibited by law from funding projects that provide exclusive school bus transportation. Thus, the degree to which a project provides any school service is not an appropriate measure.

FTA does not believe community labor agreements, community participation processes, and disadvantaged business set asides are aspects of project performance. Compliance with requirements in these areas is, nonetheless, a prerequisite for ultimate approval of Federal funding for a New Starts or Small Starts project.

g. Reduced Vehicle Use

Comment: A number of comments proposed that reductions in VMT or vehicle trips (or slower growth of either) associated with a transit investment be included in the cost effectiveness measure. Approximately one-third noted such benefits result from increases in transit accessibility, mixed-use development, and non-motorized travel. A small number stated VMT is closely related to energy use and emissions, which transit projects should seek to reduce. One asserted VMT reductions constitute one of the most important benefits that can result from a transit project, and another comment observed VMT reductions are a community benefit that is not currently captured under the cost effectiveness measure.

In terms of VMT data collection, one comment suggested readings of household vehicles' odometers could be obtained in collaboration with EPA and other Federal agencies.

Response: FTA believes changes in VMT are an important benefit of a proposed transit investment. However, FTA believes the primary measure of effectiveness used in the cost effectiveness calculation should focus on the usage of the project rather than a secondary effect such as changes in VMT. Instead, FTA believes that the environmental benefits produced by changes in VMT should be counted in the environmental benefits measure. FTA believes the best approach for estimating changes in VMT resulting from implementation of the project is to base the estimate on the number of trips expected on the project, multiplied by simple factors, so as not to create undue burden on project sponsors. Thus, collection of direct data on automobile travel would not be necessary.

h. Congestion and Non-Transit Travel Time Reductions

Comment: A large number of comments addressed inclusion of congestion and travel time reductions in cost effectiveness, with most of these recommending highway travel time reductions be quantified. Several comments suggested project-specific projections replace the current 20 percent user benefit allowance for highway travel time savings. One indicated the travel time savings should be fairly straightforward to determine since travel demand models produce speed and volume estimates for highway network links, while another suggested that reductions should be possible to determine through surveys. One comment cautioned that the reliability of models' travel time projections should be ensured first. Several comments supported inclusion of congestion or travel time reductions without providing further detail. A small number of comments alluded to general travel time reductions, one specifically mentioning the corridor level. One comment referred to congestion reduction as an efficiency benefit of a project.

A few comments specified measures beyond travel time reductions, with two proposing travel time savings be monetized, one via the value of conserved fuel. Another comment proposed evaluating project cost per hour of reduced delay. As rationale, one comment observed that public transportation saves Americans hundreds of millions of hours of congestion each year.

Response: FTA agrees reduction in highway congestion can be an important benefit of a transit investment. However, FTA's recent experience is that it is extremely difficult to quantify reductions in highway travel time using current models. Although the models purport to estimate speeds and volumes, FTA has been unable to get reliable estimates of changes in aggregate highway user travel time and thus has not counted such benefits, even though the current regulation has called for their inclusion. FTA believes a direct measure of project utilization can provide a useful surrogate for estimates of highway user travel time savings, since the more the project is used the more highway travel time savings are likely to occur.

Given the difficulty in obtaining reliable estimates of highway travel time savings, it would not be practical to calculate their monetary value either due to time saved or fuel saved.

i. Transportation Costs

Comment: A large number of comments endorsed consideration of reduced transportation costs as part of the cost effectiveness measure. Many of these comments proposed infrastructure cost savings associated with a transit project, particularly in terms of roadway expansion and maintenance, be incorporated into the cost effectiveness measure. About half of these comments cited denser, more compact development patterns around transit stations as critical to realizing these savings, while one also cited mode shifts to transit as a factor. One comment proposed capital assets (such as buses) that will be replaced through a transit project be credited toward the project cost. Several comments proposed consideration of vehicle operating cost reductions associated with shifts to transit, such as lower parking, insurance, and fuel costs. One comment proposed a lower rate of automobile ownership as a benefit.

Response: FTA agrees reductions in aggregate transportation costs can be an important benefit of a proposed project. FTA believes, however, that these can be captured well by a measure focusing on project utilization (such as project trips), as the more a project is used, the more the savings of such costs there are likely to be. Savings in the costs of other investments may also be important, but FTA believes it is more important to focus on the project's specific cost and benefits, rather than bringing in the

relative reduction in the costs of other modes. FTA agrees denser, more compact development can be supported by a transit investment, but believes it is better to account for such benefits in the measure of economic development. FTA is proposing, at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

FTA is proposing a measure in which the capital cost of the project is counted in the cost effectiveness measure. Reductions in investments in other modes can be accounted for in the assessment of local financial commitment. FTA agrees reduced private vehicle operating and ownership costs can be an important benefit of transit projects. But FTA believes a direct measure of project utilization can be an appropriate surrogate for these benefits as the more a project is used, the more such savings are likely to accrue to transit patrons.

j. Safety Benefits

Comment: Several comments proposed safety benefits associated with a transit project be measured as part of cost effectiveness, with five of these proposing consideration of traffic collision reductions. Approximately half of these comments suggested measures: one recommended evaluating cost reductions associated with decreases in collisions, another recommended assessing project cost per life saved, and a third proposed monetizing benefits associated with collision reductions.

A small number of comments proposed consideration of the safety benefits to the general transportation network and not just the project, with one in favor of monetizing the safety improvements and another stating that improvements would result from fewer distracted drivers on the road.

One comment proposed consideration of transit passenger safety but offered no elaboration.

Response: FTA agrees safety improvements are an important benefit of a proposed project. FTA is proposing to consider such improvements as part of its environmental benefits criterion. FTA is proposing to estimate the change in accidents and fatalities based on standard factors related to change in VMT.

k. Non-Motorized Travel

Comment: A number of comments proposed FTA consider increases in non-motorized travel as part of the cost effectiveness measure. A small number of the comments observed that higher levels of walking and bicycling are associated with lower obesity, better public health, more human interaction, and increased sense of community. One comment offered that more non-motorized travel is the type of benefit that can result from a transit project. Another comment suggested promoting non-motorized travel may be more beneficial than VMT reduction in transit-rich areas with low auto use.

A few comments proposed projected changes in mode split as a measure. Some comments proposed credit for locating stations in areas with existing bicycle and pedestrian infrastructure, with one noting that better access for pedestrians and bicyclists will increase transit use.

One comment proposed project sponsors be required to demonstrate connections between existing or projected land uses and pedestrian travel.

Response: FTA agrees transit investments often lead to increases in non-motorized travel. FTA is proposing to assess the benefits of increased non-motorized travel as part of the environmental benefits criterion.

l. National Security

Comment: A small number of comments supported inclusion of national security benefits associated with transit investments in the cost effectiveness measure. One proposed measuring reduced fuel consumption associated with shifts from single-occupant vehicles to transit, and another recommended considering whether projects provide viable options to ''escape'' from traffic.

Response: FTA agrees a reduction in the use of fuel connected with a transit investment could have national security benefits, but believes this is better captured under the environmental benefits criterion than under cost effectiveness. FTA is proposing to calculate the monetary value of the energy usage changes that come from changes in VMT using standardized values. FTA notes a significant part of the benefits that come from reducing energy use are accounted for by the resulting change in pollutant and greenhouse gas emissions. To avoid double counting, the monetary value of energy usage changes will be factored down by some percentage specified by FTA in future policy guidance.

Simplified Measures

Cost Effectiveness Question 4: ''Are there simpler measures of cost effectiveness that FTA could use? If so, what are they? Please be specific.''

Comment: Several comments supported simplified measures in general, with one stating that the evaluation and rating process needs more transparency, clarity, and ease of understanding. Another comment generally stated the measurement of cost effectiveness should be comprehensive and reflect the value of the transit investment in meeting Federal and local goals. One other comment stated FTA should work with EPA for VMT and emissions data and further consolidate existing Federal data. Although some comments were received in support of a simplified measure of cost effectiveness with no specific proposal as to what measure should be used, most comments offered proposals for specific measures.

Response: FTA agrees with the importance of transparency, clarity, and ease of understanding and is proposing what it believes is a cost effectiveness measure that will meet these goals. FTA also agrees the cost effectiveness measure should be as readily comprehensive as possible. FTA intends to work with EPA to ensure consistency in its valuation of air quality benefits in the environmental benefits criterion.

1. Cost Per Rider or Passenger Trips

Comment: A number of comments supported using a cost effectiveness measure that would compare costs to ridership or passenger trips instead of the current measurement, which compares costs to transportation system user benefits (expressed as travel time savings). A few of these comments specifically supported cost per rider. Of these comments, one comment specified the cost per rider measure should be weighted for average distance traveled instead of travel time savings. Thus, based on this comment's suggestion, two riders that travel one mile would be given equal weight to one rider that travels two miles. Another comment suggested the use of cost per rider would remove any bias of one mode over another. Finally, one comment suggested FTA should evaluate projects based on their ridership per mile of service provided in order to create a more level playing field for projects that have high capital construction costs due to their location in dense urban areas.

Two comments specified the cost effectiveness measure should be based on total number of trips, not passenger miles. In one, the rationale was that the

''benefit'' to the rider is the trip itself, and not the length of the trip. In the other case, the rationale was that it would provide an incentive for project sponsors to propose projects in urban core areas instead of lengthy projects between the central business district and distant suburbs. One comment specified this measure should be used only for Small Starts projects in order to further simplify the evaluation process for the Small Starts program. Another comment specified the cost effectiveness measure should be based on cost per new passenger.

Response: FTA agrees cost per rider is an appropriate way to evaluate cost effectiveness. FTA does not believe it is appropriate to weight or otherwise adjust for the costs of construction in a particular area since it is necessary to compare projects across the country. FTA believes it is better to use a cost per trip measure rather than a cost per new rider measure. FTA used cost per new rider prior to using the current measure of cost per hour of travel time saved. It posed many of the same complexities as the current measure and created a bias against projects improving service for existing riders in favor of projects capturing new transit riders. In particular, it would require a point of comparison for its calculation (the baseline alternative) while the cost per trip measure being proposed does not.

2. Other Proposals for Simplification

Comment: FTA received a number of other comments with specific proposals for simplification of the cost effectiveness criterion. Those comments are detailed here.

One comment suggested FTA use a ''walkscore'' as a measure to account for the livability of a transit project, and include this livability factor in the calculation of cost effectiveness. According to the comment, walkscore.com is a Web site that uses an algorithm to measure the walkability of an address. The comment suggests FTA develop a walkscore-type rating to measure the livability of a project corridor before the project is implemented. In addition, the comment suggests FTA require project sponsors to bring their walkscore to an acceptable level before implementing a proposed project.

One comment suggested that a simpler cost effectiveness measure would be based on VMT, modal spilt, and health outcomes.

One comment suggested a simpler measure of cost effectiveness for Small Starts projects that would be calculated by dividing annualized cost by the sum of economic development benefits, mobility benefits (defined as the number of transit riders), and a measure of land use.

One comment suggested cost effectiveness be based on the difference in safety and the value of productivity that is inherent in taking transit as opposed to driving (e.g., the productivity increase that would result from the ability to text, email, and talk on the phone).

One comment suggested cost effectiveness be based on operating cost per rider or operating cost savings per rider (compared to the no build or TSM), ridership (giving credit to short trips), and some annualized measure of capital cost (but not making cost the main focus).

Another comment suggested the sole or primary factor for project evaluation should be incremental revenue passenger mile created divided by dollar amount of Federal capital provided. The comment said the number of riders should not affect the Federal government's decision on whether to invest in the project.

One other comment suggested one way to compare projects across cities is to use a radar plot for a variety of indicators, some of which reflect cost effectiveness, others of which reflect other factors such as safety, punctuality, reliability, and crowding.

Response: FTA appreciates the suggestions for alternative approaches to measuring cost effectiveness. However, FTA believes a simple measure of cost per trip is preferable to those suggested. Improvements in walkability are an important feature of many transit projects. However, the measure suggested would add a degree of complexity that does not appear to improve the degree to which the merits of a project would be indicated.

FTA agrees changes in VMT, increased transit mode split, and health outcomes may be important benefits of a transit investment. All of these are related to project usage, which is a simpler measure to calculate and understand. Furthermore, these are proposed to be estimated under the environmental benefits criterion, monetized, and compared to the annualized capital and operating cost of the proposed project under that criterion rather than under cost effectiveness.

FTA believes monetizing forecasts of economic development may be simple in concept, but very difficult to evaluate in practice. Difficult evaluation approaches would be needed to quantify the economic development effects in any reliable detail, and providing monetary values is not an easy task. FTA prefers an approach that allows project sponsors to devote resources to calculating and monetizing economic development effects only at their discretion, using scenario-based approaches, rather than requiring specific forecasts.

FTA agrees there are benefits from transit projects that come from changes in VMT and is proposing to measure some of those benefits under the environmental benefits criterion. Under the multiple measure approach for evaluating project justification, FTA need not try to capture all benefits in the cost effectiveness calculation and can instead evaluate them where they might more rightly belong.

FTA agrees capital and operating costs should be part of the cost effectiveness measure. But FTA believes a simple measure of project usage is sufficient as the measure of effectiveness.

FTA does not agree with the comment that ridership is an inappropriate measure of project merit. Ridership is likely to be directly related to many of the benefits a project is likely to produce, since the more riders on a project, the more there will be changes in VMT, changes in energy use, higher likelihood of economic development, etc. Changes in passenger revenue are likely to be based to a large degree on the fare policies in place, rather than on the benefits a project is likely to produce.

FTA is proposing a cost effectiveness measure that can combine a simple measure of effectiveness (trips) and compare it to costs. The law calls for a multiple measure approach, indicating these other benefits should be assessed separately, so all of the benefits can be included in the evaluation of project justification.

3. Support for Existing Measure

Comment: A few comments were received in support of the current cost effectiveness measure, which is based on cost per hour of transportation system user benefits (TSUB). One comment stated that TSUB accounts for benefits that cannot be captured by basing the measure on ridership alone. In that comment's opinion, the use of TSUB allows project sponsors to accurately account for travel time savings and it enables transit agencies and MPOs to better calibrate their travel demand forecasting models, which are used for purposes other than applying for New Starts funding. One comment wants FTA to continue to use TSUB but to also allow project sponsors more flexibility in the development of costs and benefits (e.g., allowing a project

sponsor to take into account growth in pedestrian trips). Another comment stated the current measure is predictable, objective, and provides a comparison of different projects. That comment stated it is appropriate for projects that are utilizing large amounts of Federal discretionary funding, and that the use of a simplified measure would be more subjective, thereby creating more unpredictability for project sponsors.

Response: FTA agrees the current measure has merit in that it accounts explicitly for benefits to transit system users. It has met with resistance from project sponsors, though, because it requires comparison to a baseline alternative. Further, it has proven to be nearly impossible to include highway user travel time savings in the calculation, which was the original intent. TSUB focuses attention only on direct mobility improvements. While these are extremely important, they are not the only reason why transit investments are made. FTA agrees the current measure is objective and quantitative. However, its accuracy depends on the quality of the local travel demand forecasting process and how the baseline alternative is defined. Often, FTA and project sponsors have had to spend significant amounts of time and resources to improve models to the point where they will produce forecasts sensitive enough to the project being proposed. FTA believes a simplified measure will make it possible to use simpler forecasting techniques, including an FTA-developed national model. FTA agrees it is important decisions regarding how to allocate large amounts of Federal discretionary funding be based on the best possible information and is not proposing a simplified cost effectiveness measure to make access to federal funds easier. FTA does not believe use of simplified measure will be any less objective than the current approach. In fact, by having a measure based on absolute usage of the project (trips) rather than an incremental value of travel time savings compared to an artificial baseline alternative, the impact of changes in project costs or characteristics on the cost effectiveness measure are likely to be more predictable.

C. Environmental Benefits

Measuring Environmental Benefits

Environmental Benefits Question 1: ''How might FTA better measure environmental benefits?''

Comment: FTA received numerous comments that supported a new approach for assessing the environmental benefits of New Starts projects.

Response: FTA agrees a new approach is required and is proposing several new measures.

1. Comments on the Existing Measure

Comment: A few comments agreed with FTA that the existing environmental benefits measure is not useful in distinguishing between projects and needs to be replaced. Another comment mentioned that using the EPA's air quality conformity designation was not a useful measure because the area in which the commenter resides does not have air quality concerns. If FTA opts to keep the regional air quality conformity designation as the measure for environmental benefits, another comment added FTA should allow regions to provide information on progress that has been made to improve regional air quality and take credit for these actions.

Response: FTA agrees the existing measure, which examines only the EPA air quality conformity designation for the area in which the proposed project is located and does not look at any project specific environmental benefits, does not provide a useful basis for decision-making. FTA believes air quality improvements are an important environmental benefit resulting from transit investments, however, whether or not a particular area has air quality conformity issues. FTA currently gives proposed New Starts projects located in non-attainment areas a ''High'' rating for environmental benefits. Thus, the suggestion FTA use the existing measure but give additional credit to regions that have made progress on improving regional air quality is not possible since the projects are already receiving the highest rating possible. Further, progress that an area has made toward improving air quality from actions other than the proposed transit investment does not help to evaluate the merits of the proposed project. Thus, FTA does not believe this should be part of the evaluation. FTA is proposing to estimate emissions reductions resulting from changes in VMT due to implementation of the project and then assign monetary values to the benefits based on the current EPA air quality designation for the metropolitan area in which the corridor is located, with benefits gained in a non-attainment area being worth more than benefits gained in an attainment area.

2. Data Reliable and Easily Obtained

Comment: While most comments generally supported a new environmental benefits measure, comments also expressed concern about the potential burden on project sponsors from collecting and submitting data not previously requested as part of the New Starts process. Several comments stated that the environmental benefits criterion should be simple, readily understood without specialized environmental expertise, should not require arduous new data collection, and should emphasize the use of data already collected for other purposes or easily attainable.

Response: FTA is particularly concerned that any measures used to calculate environmental benefits not pose an undue burden on project sponsors. FTA is proposing measures that flow directly from the project analysis methods normally used by project sponsors, as well as simplified approaches for calculating environmental benefits.

3. Incorporation of Environmental Benefits Into Other Metrics

Comment: One comment recommended the environmental benefits measure be eliminated as a stand-alone measure and instead be added to the economic development effects measure to reflect the importance of economic renewal objectives. Another comment stated it is too difficult to separate environmental benefits from economic development effects and that those metrics should be combined into a single measure. One comment supported replacing all metrics (including cost effectiveness, environmental benefits, and economic development effects) with an affordability index metric presented in a report by the Center for Transit Oriented Development.

Response: The law requires a multiple measure approach and that FTA consider environmental benefits and that they be weighted ''comparably, but not necessarily equally'' with the other statutorily-required project justification criteria. Thus, the environmental benefits criterion must be treated distinctly from the economic development effects criterion. In particular, environmental factors such as improved air quality, reduced greenhouse gas emissions, reduced energy use, safety improvements, and public health benefits are all distinct from economic development effects such as enhanced regional productivity and support for job creation. Some of the economic development effects of public transportation investments, including denser, more compact development, have environmental benefits due to the resulting reduction

in the need for motorized travel. FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA recognizes compact development may have other environmental benefits not accounted for in changes in VMT, but FTA is not proposing a measure to quantify those benefits. FTA will also propose, in policy guidance, to incorporate a measure of public health into the environmental benefits measure, once a methodology for measuring public health benefits of transit projects is developed.

Because the law calls for individual evaluation and comparable but not necessarily equal weighting of each of the project justification criteria (cost effectiveness, environmental benefits, economic development, mobility, transit supportive land use, and operating efficiencies), FTA must develop a process for each, rather than using a metric such as the affordability index.

4. Consideration of Transit Agency Size, Project Setting, and Project Size

Comment: One comment encouraged FTA to employ environmental benefits measures that provide a fair and equal comparison among small, medium, and large transit agencies that have different capabilities and needs with regard to certification and extensive environmental management systems. A couple of comments stated FTA should not choose measures that penalize project sponsors seeking to make transit investments in dense urban environments compared to project sponsors making investments in suburban, less dense areas or vice versa. Another comment suggested FTA should consider a scaled approach to environmental benefits analysis based on the size of the proposed project.

Response: FTA agrees environmental benefits measures should be fair and equitable and should not burden agencies with varying capabilities. FTA is proposing the environmental benefits criterion include an evaluation of a proposed project's effect on several factors including changes in emissions, greenhouse gases, safety, energy use, and public health, which would then be monetized and compared to the annualized capital and operating cost of the proposed project. FTA is aware that how a measure is scaled is very important to ensuring beneficial projects are recommended for funding.

5. Consideration of Local versus Regional Context

Comment: Several comments discussed the context that should be used to evaluate environmental benefits. Many comments expressed a preference for a local rather than a regional environmental benefits analysis. One comment stated the environmental benefits rating should be based on the project's scope, consistency with local goals, and how well it avoids, minimizes, and mitigates environmental impacts. The comment added the environmental benefits measure should include the extent to which the proposed project includes context sensitive solutions that support fitting the project into the community. Under this approach, the comment stated each locality would have its own goals for a project so it is important that the project achieves those local planning goals. A few comments stated FTA should consider the environmental benefits of the project in the context of the immediate surrounding area. The comment suggested evaluating broader conditions in the region or the transit agency's environmental practices is less likely to assist FTA in ranking projects. One comment suggested it may be possible for a project sponsor to make the case that certain environmental benefits be given higher priority than others based on existing environmental conditions within a region and the project's ability to contribute to a solution. Another comment stated FTA should not have a pre-set weighting nationally on one attribute over another.

Other comments suggested FTA should give credit to areas that have implemented major projects in support of green initiatives.

Response: FTA believes the amount of environmental benefits generated by the proposed project should be the basis for its evaluation. Thus, the analysis should focus on the project itself. Since it is the quantity of the benefits resulting from implementation of the project that will be evaluated, rather than what percentage these benefits represent in some larger context, it does not matter whether they are viewed at a regional or local level. As noted earlier, FTA understands that how the measures are scaled is critical to assuring that environmental benefits are evaluated accurately.

FTA believes it is more appropriate to use the National Environmental Policy Act (NEPA) process to assess how a project's environmental impacts fit into a local or regional context rather than considering this in the environmental benefits criterion in the New Starts process. While locally established environmental goals for a project are important, FTA must address the merits of proposed projects on a national basis. For consistency, fairness, and to avoid unnecessary complication in the evaluation process, FTA must develop measures that will be applied to all proposed projects.

6. Project Specific Impacts

Comment: One comment stated the environmental benefits criterion should be limited to measuring the impacts of the project as opposed to the transit agency's policies.

Response: FTA agrees the environmental benefits criterion should measure the impacts resulting from implementation of the proposed project. FTA is proposing to remove a disincentive for including environmentally friendly design elements by allowing the costs of these elements to be subtracted from the cost used in the cost effectiveness calculation.

7. Consideration of NEPA and the Environmental Benefits Measure

Comment: A number of comments provided positive and negative statements on linking the environmental impacts assessed during the NEPA process with the environmental benefits criterion.

One comment suggested the benefits that would be derived from taking steps to address additional environmental sensitivity should be included in a comprehensive qualitative and quantitative environmental benefits criterion. The comment went on to state that evidence of environmental sensitivity can come from a review of the impacts identified in the NEPA document and any state environmental document, and the extent to which these impacts have been mitigated or avoided. Another comment said the environmental benefits criterion should consider a project's ''net'' benefits by considering some of the adverse environmental impacts. For example, projects with equal air quality benefits would be rated similarly even if one project was overall more environmentally detrimental than another when looking at other factors in addition to air quality. The comment suggested that information addressed through NEPA should be addressed in the New Starts process.

Other comments stated there are impacts and benefits best evaluated in NEPA and not through the New Starts evaluation process. A couple of comments stated there is no need to duplicate reporting of negative impacts

covered in NEPA because they have already been analyzed and mitigated. Instead, comments suggested the environmental benefits criterion should focus on positive benefits and especially those with long-term effects such as potential changes to the built form that reduce the frequency of motorized trips. Another comment stated that inclusion of all the factors traditionally covered as part of NEPA analysis would be too broad for inclusion in the New Starts evaluation process. The comment went on to state some factors could bias ratings based on the context in which the project occurs (urban versus suburban) as opposed to focusing the rating on actual project performance. One comment requested the NEPA-related analysis remain separate from the environmental benefits criterion because of the lack of relevant information available at the preliminary engineering stage of the New Starts process. That comment also expressed concern that integrating information about a project's environmental impacts into a funding decision could jeopardize the integrity of the NEPA process.

Another comment suggested FTA include a 45 percent weight for NEPA-defined environmental benefits and a 55 percent weight for project-specific environmental benefits.

One comment suggested using the funding incentive that comes from having an environmental benefits criterion in the New Starts evaluation process to encourage the preparation of quality analyses and documentation in the NEPA process. That comment suggested this would create an added incentive for project sponsors to submit high quality, focused environmental documents.

Response: FTA agrees the NEPA process is the best venue for assessing all of the environmental impacts and context of a proposed project. However, the law requires an evaluation of the environmental benefits of the proposed project as part of the New Starts evaluation and rating process and, hence, FTA must develop an approach to assess these benefits.

FTA agrees the context and intensity of many of the proposed project's impacts, and their mitigation, are best addressed in the NEPA process and do not need further assessment as part of the New Starts evaluation and rating process. FTA agrees long-term effects, such as changes in the built environment, may be part of the environmental benefits criterion, as well as the economic development effects criterion. Thus, FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA agrees it is important the New Starts evaluation process not be biased against projects in one type of location versus another, such as urban versus suburban. FTA believes evaluation measures should focus on project performance and the evaluation process should not jeopardize the integrity of the NEPA process.

FTA does not believe the quality of the NEPA analysis and documentation should play a part in the evaluation of environmental benefits in the New Starts process. The New Starts process should focus solely on project performance. While it is important high quality NEPA documents be produced, the quality of the documentation is not an indication of the merits of the project.

8. Priority and Weighting for Environmental Benefits Measures

Comment: One comment stated FTA should focus on environmental performance in specific areas, giving highest weight to effects that potentially harm humans and lesser weight to those that harm the environment. The comment explained that attempts to broaden the environmental benefits criterion to include the human and natural environment are notoriously subjective, prone to political manipulation, and have not worked well in Europe. A couple of comments suggested because of the overlap of considerations of the human environment with other New Starts criteria, emphasis should be placed on natural factors rather than human factors in the environmental benefits criterion. However, one of those comments stated the human environment is still worthy of consideration under the environmental benefits criterion.

Another comment recommended FTA give credit in the environmental benefits criterion for transit projects that increase accessibility and mobility for trips beyond work trips. The comment stated these types of transit projects are more sustainable because work trips are less than 30 percent of VMT and only 20 percent of person trips in the United States.

Response: FTA believes a full range of environmental benefits to both the human and natural environment should be addressed. However, FTA is cognizant of the difficulty of evaluating all of the potential effects. Thus FTA is proposing to focus on those most easily addressed such as changes in air quality pollutant and greenhouse gas emissions, energy use, and safety (FTA believes that at a later date it may also be possible to develop an approach for assessing public health benefits.). For example, while impacts on wetlands are very important, rather than examining that as part of the environmental benefits criterion, it makes more sense to carefully assess any negative impacts during the NEPA process and assure that those impacts are carefully mitigated and the costs of doing so are included the overall cost of the project.

FTA agrees non-work travel is a very important component of overall travel. Currently, both work and non-work travel benefits are counted in FTA's assessment of project performance and FTA intends to continue this practice. But FTA does not believe it is appropriate to weight work and non-work travel differently. Rather, FTA believes the measures used should simply assess the quantities of each.

9. Qualitative Versus Quantitative Environmental Benefits Measures

Comment: A number of comments suggested looking at both quantitative and qualitative environmental benefits metrics. One comment stated that these metrics do not need to be monetized. Another comment stated the rating should be indexed by ridership as an indicator of the scale of the benefit.

One comment suggested that environmental benefits lend themselves to quantification. Therefore, that comment suggested it should be possible to produce a scoring system that objectively evaluates a range of appropriate measures.

To address most environmental benefits, another comment added a qualitative rather than a quantitative approach would probably be needed. Another comment recommended not quantifying any environmental benefit measures other than possibly developing a checklist format.

Response: FTA believes it is possible to develop effective, relatively easy to apply quantitative measures and so proposes their use. FTA proposes that environmental benefits such as change in emissions, green house gases, energy use, and safety be estimated based on estimated change in VMT, then monetized and compared to the annualized capital and operating cost of the proposed project. Proper scaling is critical to a fair comparison of environmental benefits across projects. FTA prefers to evaluate environmental benefits directly rather than develop

scoring methods, such as a checklist approach in which certain environmental measures are assigned points.

10. Other General Environmental Benefits Suggestions

Comment: One comment suggested the best way for environmental benefits to be measured is to use heuristic research to look at the history of other projects and study whether they met environmental needs when they were constructed and what has occurred since then. One comment suggested FTA should look at the upcoming results from the Transit Cooperative Research Program (TCRP) panel on environmental benefits and implement those recommendations. That comment suggested the recommendations will include significant research and review by experts in the field.

Response: FTA believes methods exist to translate direct benefits of project performance, such as forecast changes in VMT, to quantities of environmental benefits. Because there is already a broad array of literature and research available, FTA is not proposing new research. As new research and methods become available, FTA would consider applying them in future policy guidance for measuring environmental benefits. FTA wrote the problem statement for the TCRP study being undertaken and serves as part of the review panel. Thus, FTA agrees the completion of that project may provide additional assistance in this matter, which FTA can address through future policy guidance.

11. Proposed Approaches to Measuring Environmental Benefits

Comment: In general, comments did not focus on a single environmental benefits metric. One comment stated there is no one universal quantifiable criterion that could be used to measure environmental benefits. Most comments recommended FTA consider a range of defined environmental benefits measures. Comments provided a range of recommendations for how FTA should consider the range of environmental benefits. Some of these comments were general statements, but a few comments provided specific frameworks for considering and rating environmental benefits. The following were the specific framework approaches proposed.

a. Checklist or Point Systems

Several comments stated FTA should further consider an indexing or checklist approach as proposed in the summary of the March 2009 Colloquium on Environmental Benefits. Another comment stated the checklist brings the environmental benefits criterion from its current focus only on the regional level to a project-specific level. Other comments added that a checklist approach is a way of incorporating quantitative and qualitative measures and evaluating environmental impacts as well as project performance. These comments stated some items could be mandatory and other items could be optional. One comment suggested a point system be assigned to each item so that FTA could distinguish between projects based on point totals. These comments suggested the checklist of good environmental practices might take the approach of a commitment agreement or contract document. One comment suggested FTA look at an evaluation/scoring tool for policies that is similar to what is currently used by FTA to evaluate transit supportive land use. As an example, the comment suggested FTA look at EPA's Water Quality Scorecard.

A couple of comments suggested a point-based rating system focused on three major criteria: (1) Environmental Management; (2) Environmental and Community Enhancement; and, (3) Environmental and Community Preservation. This framework would rate projects based on representative measures under each of these criteria. The ''points'' awarded for each measure under each criterion would establish the rating of ''high,'' ''medium-high,'' ''medium,'' etc., for that criterion. The criteria would be rolled up into a summary environmental benefits rating. The environmental and community preservation portion would examine avoidance of endangered species and their habitat, inclusion of pedestrian friendly features (another comment suggested specifically a pedestrian oriented environment one-half mile around the station), and location of the proposed project in an area that has livable community characteristics and provides access to environmental justice populations (although this could go under a mobility criterion). The environmental and community enhancement portion would be based on measures such as project or corridor fleet emissions in terms of changes in greenhouse gas (GHG) emissions per passenger mile, an agency's fleet average age or composition as indicators of air quality and energy consumption, stations built to LEED standards, and maintenance facilities built to LEED standards. The environmental management portion would assess the project sponsor's commitment to environmental management of the project. Consideration would be given to agencies with environmental management systems (EMS) specific to the project or who properly document with a similar process. Another comment also supported the use of EMS, but said that consideration should be given to whether the EMS covers only the capital program including the New Starts project or whether it also includes the agency's operating system and other environmental audits.

One comment stated FTA should consider creating a pollution reduction point system. The comment suggested that projects would be evaluated based on their ability to achieve a higher index number corresponding to a lower impact on the environment. This would give project sponsors flexibility in meeting environmental goals while tailoring projects to meet local needs.

b. Warrants

One comment suggested if a more robust measure of environmental benefit is used in the New Starts evaluation process, than these benefits should be credited to the project justification rating as extra points rather than mandated. In a similar vein, a few comments suggested using a warrants-based approach to rating environmental benefits. Another comment added this warrants/checklist approach should use information readily obtained through the NEPA process. Another comment suggested projects should be required to meet minimum goals in greenhouse gas emissions reductions, increased energy efficiency, reduction in fleet petroleum, conservation of water, reduction in waste, support of sustainable communities, and leveraging of Federal purchasing power to promote environmentally-responsible products and technologies. One of these comments went on to add that a warrants-based approach would be preferable because an indexing method would require weights that may be difficult for FTA to identify and a checklist may promote compliance to a minimal level.

c. Economic Models—Natural Resource Valuation

One comment suggested that costs, incurred in the form of ''natural services'' that a project would cause to be replaced by public infrastructure if the project disturbed nature, be counted in the evaluation process. For example, according to the comment, costs of destroying wetlands should be assigned to projects that impact wetlands as opposed to projects that leave them intact. The comment suggests the

Krutilla-Fisher Algorithm should be used to place break-even values on certain environmental benefits when the net present value calculations are used (this is an approach used in the European Union). The comment stated if the value of something is high enough to bring the net present value of a project to zero, then the project is worth constructing.

Another comment suggested the environmental benefits rating should include a cost-benefit analysis of environmental effects. However, another comment recommended FTA proceed cautiously with any approach that relies on monetized measurement. Another comment stated FTA should not attempt to monetize environmental benefits for comparison across projects. That comment stated the environmental benefit measures, including those with livability and sustainability objectives, should be considered apart from the cost effectiveness measure.

d. ''Warrants-Plus-Merits''

One comment suggested FTA adopt a ''warrants-plus-merits'' approach where projects must meet one of several identified core measures and then would be scored based on how many additional environmental measures the project incorporates. The comment recommended FTA aim for simplicity over comprehensiveness.

Specifically under the proposed warrants plus merits approach, the comment suggested a project must meet at least one of several warrants (or thresholds) to be considered further for environmental merit points. The comment proposed three warrants that it stated emphasize the two most important environmental benefits of transit—reductions in greenhouse gas emissions/air pollution and supporting mature, intensively patronized systems for which an individual extension may have lower marginal emissions reductions. The comment stated that FTA could assign overall environmental benefits scores based on whether projects achieve a specified threshold of merit points. The comment gave an example for ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' and ''low'' thresholds. The proposed environmental warrants included greenhouse gas emissions reduction, air quality non-attainment status, and air pollution capacity issues. Proposed environmental merits include greenhouse gas emissions reductions, air quality improvement and climate change impact, recycling, water quality-related improvements, land use effects, integration with planning, and environmental justice. The comment mentioned FTA could consider ISO 14001 certification, transit facilities associated with the project that have attained LEED gold or platinum standards, use of brownfields sites for the project, low impact construction methods, use of technology to reduce energy consumption, and compliance with one or more directives included in Executive Order 13154.

Response: FTA does not agree a checklist or point system that primarily evaluates good environmental practices would be advantageous over relatively simple quantitative measures of environmental benefits that measure project performance. The simple quantitative measures can assess a range of human and natural environment values including changes in air pollutants, greenhouse gas emissions, energy use, safety and public health (public health would be measured once a methodology for doing so is developed).

Under a point system, it is difficult to develop a weighting scheme assigning points based on the relative importance of various factors. It is also difficult to fairly establish the number of points needed to get each rating level (''low'' through ''high''). FTA believes there are better ways to remove disincentives for use of good environmental practices, for example, by not counting the cost of certain desirable environmentally friendly design features in the calculation of cost effectiveness. While use of environmental management systems is a worthy goal, the merits of the project are the focus of FTA's evaluation process. Some of the factors suggested for environmental and community enhancements are issues that should be addressed during the NEPA process if there are negative impacts needing mitigation. FTA believes some of the others factors mentioned in the comments are better addressed in the economic development effects criterion. FTA agrees that metrics such as the change in greenhouse gas emissions or energy use represent aspects of project performance and should be counted as part of a quantitative measure.

FTA agrees warrants-based approaches can be useful in streamlining project evaluation. Such approaches, however, should be based primarily on the evaluation measures being utilized. Once these measures are put in place, the degree to which a project can automatically receive a certain rating based on characteristics of the project or the project corridor without detailed analysis can be established. FTA is proposing to develop such warrants and specify them in future policy guidance.

FTA believes a detailed analysis of the net impacts on certain environmental factors is unnecessarily complicated. For example, while impacts on wetlands are very important, rather than using those impacts as part of the environmental benefits measures, it makes more sense to carefully assess any negative impacts on wetlands as part of the NEPA process and assure that those impacts are carefully mitigated and the costs of doing so are internalized in the overall cost of the project. Although a warrants-plus-merits approach has some appeal, FTA believes it more appropriate to focus on a quantitative assessment of the relative value of environmental benefits since that approach can be implemented relatively easily. Further, FTA intends to address possible incentives for taking into account broader environmentally friendly practices, such as ISO 14001 or LEED certification, use of brownfield sites, low construction impact methods, etc., by subtracting the additional costs of these from the cost effectiveness calculation.

Environmental Benefits Question 2A: ''In measuring environmental benefits, should FTA consider a broad definition of environment, as does the National Environmental Policy Act (NEPA), which includes consideration of both the human and natural environment?''

Comment: A substantial number of comments supported expanding the definition of environmental benefits. Of these comments, a few stated FTA should consider as broad a definition of environmental benefits as NEPA does. A couple of comments suggested environmental benefits should be broad to consider the natural, human, and social environment and address a wide range of contexts. Another comment stated in addition to NEPA, FTA should use livability principles to consider a broad definition of the environment, which includes creating healthy transportation systems, achieving environmental justice, and addressing climate change. Another comment provided a caveat that a broad definition of environmental benefits should be used if it can be incorporated into an efficient process.

A number of comments also recommended the negative environmental impacts of high-density development around projects should be assessed, including traffic, noise, pollution, shadowing, and wind tunnel effects. One comment suggested FTA should consider community quality of life instead of environmental issues.

Response: FTA agrees an expanded definition of environmental benefits should be used and that it should include benefits to the human and natural environments. In particular, FTA will focus on air quality emissions, greenhouse gas emissions, energy usage, safety improvements, and public health benefits (public health would be measured once a methodology for doing so is developed). These can be addressed with a reasonable amount of effort and are consistent with broader livability principles. FTA believes environmental justice concerns are better addressed in the NEPA process. Environmental justice concerns are generally dependent on detailed considerations of a project's setting and design, and are thus a part of the project development process. They are not appropriate as a national measure of project merit. In addition, FTA considers transit equity and how a project affects the mobility of transit dependent populations in its evaluation of mobility benefits.

Environmental Benefits Question 2B: ''Should FTA focus on the environmental performance of specific areas such as air quality emissions, energy use, greenhouse gas emissions, or water quality?''

1. Air quality

Comment: FTA received a large number of comments supporting the use of air quality changes in the environmental benefits criterion. Several comments expressed a preference for a ''project specific'' approach to assessing air quality impacts, as opposed to a regional air quality analysis, or suggested comparing emissions at a local level to corridor area emissions. Other comments suggested FTA measure the air quality impacts from reduced VMT, changes in land use patterns or density, projected average daily ridership, and reduced automobile trips projected to occur from implementation of the proposed project. Generally, those comments who supported using air quality changes felt that it should not be the only measure for the environmental benefits criterion.

A couple of comments opposed using air quality changes as a measure of environmental benefits. They either opposed FTA's current approach to measuring environmental benefits based upon EPA's air quality conformity designation for the metropolitan area in which the proposed project is located, or they felt that air quality benefits were already accounted for in other measures.

Another comment suggested the methods to evaluate environmental benefits also take into account the impacts from increased traffic congestion that might occur from construction or loss of traffic lanes for trucks, passenger cars, and buses due to the adoption of transit-only lanes.

Response: FTA agrees air quality benefits are among those that should be explicitly examined in assessing environmental benefits. FTA believes the changes in EPA-regulated pollutant emissions projected to occur as a result of implementation of the proposed project should be the primary measure of air quality environmental benefits. To avoid concerns about the level of analysis required FTA is proposing to calculate the change in emissions based on estimated changes in VMT resulting from implementation of the proposed project. FTA is also proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

FTA agrees its current approach, focusing only on the EPA air quality conformity designation for the metropolitan area in which the proposed project is located, is inadequate. Thus, FTA is proposing a series of quantitative measures to be used to measure environmental benefits. Since evaluation of environmental benefits is required by law, FTA will use changes in air quality emissions as part of its evaluation approach.

Any negative effects of a proposed project on traffic congestion are evaluated and mitigated as part of the NEPA process. Further, FTA believes it would be unnecessarily complicated to attempt to address such effects in the air quality evaluation.

2. Greenhouse Gas Emissions

Comment: FTA received a large number of comments supporting using the change in greenhouse gas emissions estimated to result from implementation of the proposed transit project as a measure of environmental benefits. A few of these comments stated FTA should consider change in carbon dioxide (CO2) emissions, or CO2 per passenger mile. Several comments recommended FTA base the change in greenhouse gas emissions on the change in regional VMT projected to occur from implementation of the proposed project. A couple of comments recommended FTA consider the analysis of greenhouse gas emissions as described in the American Public Transit Association's (APTA) ''Recommended Practices for Quantifying Greenhouse Gas Emissions'' document. Another comment recommended the approach used in FTA's discretionary Transportation Investments for Greenhouse Gas and Energy Reduction (TIGGER) program. Another comment recommended FTA evaluate changes in carbon dioxide emissions and then monetize each ton of change based on independently determined ceilings of relative cost effectiveness (e.g., $50 per ton reduced).

Response: FTA agrees changes in greenhouse gas emissions should be examined in the measure of environmental benefits. Total change in CO2 can be calculated using the estimated change in VMT occurring from implementation of the proposed project. At the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA notes that the APTA methodology was developed for evaluating the greenhouse gas effects of existing transit systems and agencies, and relied on standard multiplication factors to convert transit ridership to changes in VMT. FTA proposes to do the same with respect to calculating changes in VMT that result from transit projects. The environmental benefits would be monetized and compared to the annualized capital and operating cost of the proposed project for use in the establishment of an environmental benefits rating.

3. Energy Use

Comment: FTA received a substantial number of comments on whether change in energy use should be included as a measure of environmental benefits. A large number of these comments supported change in energy use as a measure of environmental benefits. Many of these comments suggested measuring differences in fossil fuels, foreign oil, or reductions in energy use as a result of change in regional land use patterns. Several comments suggested using change in regional VMT to calculate changes in energy use, with two of these suggesting that this be linked to changes in regional land use patterns. A couple of comments suggested looking at a change in energy consumption in the project corridor based upon changes in walk and pedestrian access, as well as reduced auto travel. Other comments suggested measuring change in energy use based on the forecasted change in

regional VMT or projected average daily ridership.

Response: FTA agrees change in energy use is appropriate as part of the environmental benefits criterion. As with greenhouse gas emissions, FTA is proposing that change in energy use be calculated from estimates of direct changes in VMT. At the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA believes it is sufficient to calculate change in energy use and that it is not necessary to make the extra effort to determine whether such energy is derived from fossil fuels or foreign oil. FTA notes a significant part of the benefits that come from reducing energy use are accounted for by the resulting change in pollutant and greenhouse gas emissions. To avoid double counting, the monetary value of energy conservation will be factored down by some percentage specified by FTA in future policy guidance.

4. Water Quality

Comment: A few comments supported considering change in water quality as a measure of environmental benefits. One comment stated that change in surface runoff should be considered.

Response: FTA does not agree water quality change should be examined in the environmental benefits criterion. FTA believes the primary environmental benefits of major transit investments come from changes in air quality, greenhouse gas emissions, energy use, and public health and safety. Water quality changes related to transit infrastructure come primarily from change in surface runoff, which generally arises from changes in paved surface area. Although some of these changes may be localized effects, the primary water quality benefit is likely to come from regional effects due to changes in land use patterns that may come about after a public transportation investment; those changes in land use patterns are more difficult to evaluate.

5. Public Health

Comment: A number of comments recommended FTA consider in the environmental benefits criterion the public health benefits that would result from improved air quality and increased physical activity resulting from implementation of a proposed project. One comment favoring the inclusion of human health and pollution in the environmental benefits criterion suggested FTA consider a better assessment for air quality that looks at a range of air quality values rather than the current approach that evaluates whether a project is or is not in an attainment area. Another comment recommended the environmental benefits criterion include data from environmental health studies as well as evaluate diesel particulate matter impacts separate from ambient particulate matter pollution, as recommended by the California Air Resources Board. The comment further recommended FTA include an assessment of cancer incidence and type in areas with transit over time and separate this information by age and race.

FTA also received several comments recommending inclusion of a physical activity measure in the environmental benefits criterion. Comments stated walking and biking, including to and from public transit, decreases obesity and improves public health. One comment recommended FTA compare a projected ''business as usual'' scenario to the number of walking, biking, and other mode shifts estimated to result from implementation of a proposed transit project to estimate reductions in weight and improvement in health outcomes.

Another comment suggested FTA evaluate the walk, bike and transit estimated modal split to award environmental benefits credit because these activities increase human interaction and increase a sense of community.

Response: In its implementation of the Clean Air Act, EPA establishes National Ambient Air Quality Standards (NAAQS) for criteria pollutants based on assessments of levels which are protective of public health. FTA believes any reduction in the emission of these criteria pollutants would be beneficial to public health and has determined for the purposes of New Starts project evaluation and rating it is not necessary to explicitly calculate changes in health as a result of changes in pollutant emissions.

On the other hand, FTA agrees some public health benefits other than improvements in air quality should be part of the environmental benefits criterion. FTA agrees these benefits are likely to be based on the degree to which there is additional walking or physical activity related to the usage of the proposed system. FTA is proposing to measure public health benefits as part of the environmental benefits criterion once a methodology for doing so is developed.

6. Consistency With State or Regional Sustainability Plans or Policies

Comment: Several comments stated consistency with state or regional sustainability plans and policies should be included in the environmental benefits criterion. One comment stated it is premature to evaluate projects based on their alignment with state or regional sustainability plans because these plans do not exist consistently across the country. One comment noted these types of plans depend on a variety of factors that are not within the direct control of the project sponsor. The comment added that if these plans are considered in the environmental benefits criterion, there should be flexibility to consider various environmental or smart growth plans. Another comment, however, noted it was important to evaluate the transit project in the context of regional sustainability planning.

A couple of comments stated that transportation and land use issues, including plans that encourage development along the project corridor, should be given more weight. Another comment recommended FTA consider how a project affects regional air quality plans, growth management plans, and other environmental plans and policies.

Response: FTA does not agree that consistency with regional sustainability plans should be part of the environmental benefits criterion. These plans are not as closely related to the performance of the project, which FTA believes should be the focus of the environmental benefits measures used. FTA believes it is more appropriate to consider how these plans might be supportive of the project in the economic development criterion. Likewise, plans encouraging development along the project corridor are also better evaluated as part of the economic development criterion. In addition, the degree to which a project is consistent with regional sustainability plans may be considered in the ''other factors'' that FTA evaluates.

7. Environmental Management Systems

Comment: FTA received several comments on including environmental management systems (EMS) in the environmental benefits criterion. A number of these comments opposed the use of EMS as a measure. Their justifications included the following statements: The New Starts evaluation should not include good business practices such as EMS; the presence of an EMS does not aid in distinguishing among projects; EMS are not fairly open enough to all project sponsors; and

important environmental benefits associated with projects such as changes in VMT and emissions or air quality improvements would not be reflected.

Several comments expressed general support for consideration of whether a project sponsor has an EMS in the environmental benefits criterion. One comment stated project sponsors should be encouraged to look at their ongoing environmental impacts and identify means and measures to reduce these impacts. A couple of comments added FTA should evaluate whether a project sponsor has a project specific EMS, an EMS for their capital program, or an EMS for operations of facilities. One of these comments also recommended FTA consider whether project sponsors have obtained ISO certification or other EMS certification for their program. Another comment suggested FTA consider whether a project sponsor is applying EMS principles to the project. The comment stated that to satisfy this measure, a project sponsor with an EMS for a specific project would be allowed to provide less information than a project sponsor implementing EMS principles, but without a broader EMS.

Response: Although FTA encourages the use of EMS, it does not believe its use should be part of the environmental benefits criterion. FTA believes environmental benefits measures should focus on overall project performance. While a project-specific EMS may be indicative of project sponsor's sensitivity to the environment and may improve the implementation quality of environmental mitigation measures and requirements, these environmental benefits would be small in comparison to direct environmental benefits resulting from implementation of a well-designed transit project. Use of an EMS is an appropriate part of tracking commitments from a NEPA process or as part of transit operations, and FTA will continue to support its use in those contexts. FTA is proposing to allow the costs of certain environmentally friendly elements and practices, such as the implementation of a project-specific EMS, to be treated as a ''betterment'' that can be subtracted from the cost effectiveness calculation.

8. Parking

Comment: A few comments recommended FTA consider parking policies in the environmental benefits criterion. A couple of comments said projects in areas with limits on per-capita off-street parking or projects in areas with low per-capita parking should receive extra credit. Another comment said that the environmental benefits evaluation should consider flexible parking requirements.

Response: FTA believes it is more appropriate to assess parking policies under the economic development criterion since they are likely to be supportive of a project, rather than a performance-based outcome of the project.

9. Other Metrics

Comment: A number of comments suggested environmental benefits cover a range of issues. Those mentioned included protection of historic resources, access to cultural resources, access to open space and recreation, access to education, environmental justice, reductions in air quality emissions, fuel savings and reductions in energy use, reductions in greenhouse gas emissions, improvements in water quality, impacts on endangered species, spatial impacts on streetscapes, noise impacts, parking, environmental management systems, mode shift, mixed use infill development, complete streets, VMT reductions, transit use increases, provision of greenways/streets for pedestrian travel, low-income households served, physical activity, transit dependent households served, use of infrastructure, access for low-income people to job centers, creation of a healthier community, preservation and strengthening of communities and social fabric, environmentally friendly administrative policies including telework, support for transit-appropriate development on brownfields, flexible work schedules, corridor car counts, transportation demand management policies, allowance of Federal tax credits, and pre-tax set asides for alternative commutes.

Response: FTA believes protection or support for a wide range of human and natural resources, such as those noted, are best covered in the NEPA process or as part of the economic development criterion. Potential negative project impacts should be evaluated in the NEPA process, and mitigated to the degree appropriate and included in the cost of the project. Such impacts, as well as various supportive policies are not project-specific performance outcomes.

Environmental Benefits Question 3: ''Should the environmental benefits evaluation consider the steps a project sponsor takes to mitigate the construction impacts of New Starts projects in addition to the environmental effects of their operation? Should the origin and methods to obtain construction or vehicle materials; energy type and use; and water consumption be considered in the overall evaluation of environmental benefits?''

1. Construction Mitigation

Comment: FTA received a large number of comments on the consideration of construction mitigation in the environmental benefits criterion. Several comments recommended FTA consider a project sponsor's construction mitigation efforts; however, one comment stated it should not be the sole measure of environmental benefits.

One comment recommended construction impacts be evaluated by comparing construction emissions to the project's emissions savings over a twenty-year analysis period. Another comment stated FTA should not include greenhouse gas emissions resulting from project construction in the evaluation of a project's overall environmental benefits.

Several comments cited the following reasons for not considering construction mitigation: Construction impacts are temporary; the New Starts evaluation takes place too early in the process to know the construction impacts; construction mitigation could increase the project cost, thereby affecting the cost effectiveness rating; construction mitigation already occurs in the NEPA process; and, it does not represent an ''environmental benefit.'' One comment suggested that construction mitigation become a requirement for all projects, thereby eliminating it as a distinguishing factor. Another comment noted that construction mitigation best practices should be adopted as a minimum requirement for projects.

Response: FTA agrees construction mitigation should not be part of the environmental benefits criterion. Construction mitigation efforts are not related to the operational performance of projects and they would be difficult to measure nationally. Moreover, mitigation of the negative impacts of construction is sensitive to context, and is thus best handled as part of the NEPA process.

2. Including Lifecycle Environmental Costs in the Measure of Environmental Benefits

Comment: FTA received a large number of comments on whether the origin and methods to obtain construction or vehicle materials, energy type and use, and water consumption should be considered in the environmental benefits criterion.

A number of comments suggested FTA provide higher ratings for proposed projects powered by renewable energy sources (partially or wholly), credit those projects that do not use fossil-based fuels, and provide lower ratings to proposed projects that use fossil-based fuels. A number of comments suggested FTA consider the energy source required to operate the project, methods of terminal construction (including the energy savings and efficiencies used for long-term station operations), and full lifecycle impacts of bio-fuels (including emissions from indirect land use).

One comment recommended FTA implement environmental benefits measures that encourage the use of local materials because they reduce transportation and associated environmental costs. Another comment recommended project sponsors receive credit for using recycled materials. A couple of other comments suggested FTA evaluate the lifecycle costs of design choices, specifically sustainable design, by incorporating LEED design criteria that evaluate the origin and methods used to obtain materials, energy use, and water consumption.

A couple of comments recommended FTA not consider lifecycle impacts when measuring environmental benefits because, among other reasons, lifecycle analysis tools are incomplete. They went on to state that in general transit has lower greenhouse gas emissions than competing modes.

Response: FTA believes it is not necessary to evaluate a project based specifically on what source of energy is used for project propulsion, but rather on the estimated energy savings expected to result from implementation of the project. One of the reasons for not considering the source of energy anticipated to be used for a proposed project explicitly is that it can change over time for some modes, and may not be different enough from project to project to help differentiate among projects. Further, FTA believes that public transportation investments support national energy policy goals (such as reduced dependence on foreign fuels), whether or not transit vehicles run on fossil fuels or alternative sustainable energy sources since they reduce VMT. FTA intends to take steps to remove disincentives to incorporating environmentally friendly features that are potentially more costly, such as alternative fueled vehicles, by subtracting these costs from the calculation of cost effectiveness.

FTA agrees using local materials would reduce the environmental impacts of projects, but does not believe that the impacts would be significant enough to help distinguish between projects.

FTA believes it is appropriate to provide incentives encouraging incorporation of elements that would allow for LEED certification and other environmentally friendly construction techniques, but believes it is better to address these incentives by subtracting their costs from the calculation of cost effectiveness.

FTA is not proposing to evaluate lifecycle impacts in the environmental benefits criterion because it adds complexity and is unlikely to produce different project rating results.

Environmental Benefits Question 4: ''Should FTA consider the reduction in single occupant vehicle usage as part of its evaluation of environmental benefits? What method should be used to measure the changes in vehicle miles travelled resulting from implementation of a project? Please be specific about how FTA should measure this.''

1. Reduction in Single Occupant Vehicle Usage

Comment: FTA received a large number of comments on whether it should consider change in single occupant vehicle use in the environmental benefits criterion. Many of those comments supported measuring changes in single occupant vehicle use, and six comments were opposed.

Of those supporting evaluation of the change in single occupant vehicle use, a few comments stated that local agencies should be allowed flexibility in calculating changes in single occupant vehicle use. One comment stated that avoided motorized trips should be used as a proxy for single occupant vehicle use.

Several comments opposed to evaluating the change in single occupant vehicle use stated that such changes do not reflect an environmental benefit. Other comments noted that the project may achieve environmental and performance objectives, despite a failure to reduce single occupant vehicle use.

Response: FTA agrees the change in single occupant vehicle use by itself does not reflect an environmental benefit. Instead, FTA believes it is appropriate to estimate all of the environmental effects of reducing motorized travel due to implementation of the proposed project, either directly or indirectly, and to calculate these effects. This includes changes in emissions, energy use and improvements in safety and public health using simplified methods (public health would be measured once a methodology for doing so is developed).

2. Method for Calculating the Change in Vehicle Miles Traveled

Comment: FTA received a substantial number of comments on whether to use change in VMT in the environmental benefits criterion. Most of these comments suggested using change in VMT; two of those suggested a corridor-based measure of VMT. One comment suggested using VMT per capita, and another suggested using VMT per household in the station areas.

Several comments were opposed to using a change in VMT. The comments expressed concern that a change in VMT may not be an environmental benefit; that it would be difficult to attribute a change in VMT to a transit project; and that areas with high transit dependency would not have substantial changes in VMT.

Response: FTA believes that changes in VMT estimated to occur with implementation of the proposed project are a primary indicator of the project's likely environmental benefits. However, FTA believes it is fairly simple to calculate environmental benefits in their own terms (e.g., tons of pollutant emission reductions) and that expressing these benefits in these terms is helpful in understanding the full effects of a proposed project. Calculation of change in VMT is the main way in which FTA proposes deriving these benefits.

Environmental Benefits Question 5: ''Should FTA consider certification of the planned facility through the Leadership in Energy and Environmental Design (LEED) Green Building Rating System; low impact development of transit facilities; or energy production with windmills or solar panels?''

1. Leadership in Energy and Environmental Design (LEED)

Comment: A large number of comments discussed whether FTA should consider certification of a planned facility through the Leadership in Energy and Environmental Design (LEED) Green Building Rating System in the environmental benefits criterion. Many of those comments recommended

that FTA include LEED and similar rating systems and principles in the environmental benefits criterion. One comment stated incorporating LEED design criteria for stations and maintenance facilities would allow for consideration of the origin and methods to obtain materials, energy type and use, and water consumption in the environmental benefits criterion. Another comment stated building stations and maintenance facilities to LEED standards (including storm water management and water quality) promotes environmentally responsible projects by reducing energy consumption and enhancing environmental design. One comment suggested incorporation of LEED certified buildings in a project only be considered as a bonus in the environmental benefits rating. Another comment suggested LEED buildings be included in the measurement of environmental benefits, but should not make the whole difference between a project that gets funding and one that does not.

Several comments stated FTA should not include LEED and/or similar rating systems in the environmental benefits criterion. A couple of comments recommend FTA encourage LEED and similar systems, but not mandate them. Another comment stated current LEED specifications are often inappropriate for transportation facilities, but are more suited for offices, commercial buildings, and multi-use dwellings. Other comments noted LEED certification requirements may be best addressed through NEPA, and that building certifications measure processes rather than outcomes. A comment suggested use of LEED or similar rating systems may not fit well into the New Starts evaluation and rating process because LEED accreditation for buildings is determined at the end of the process after a full range of decisions are made, whereas the New Starts evaluation and rating process happens early in project development before significant engineering and design has occurred. Another comment suggested FTA use LEED–ND (neighborhood development).

Comments also provided suggestions for how LEED may be incorporated into the New Starts process. Several comments noted FTA should consider the higher upfront costs associated with applying such methods and standards (LEED, low impact development (LID), energy production, etc). The comments stated increased costs could impact project implementation, and the result could be a substantial increase in the overall project cost that could perhaps keep the project from rating acceptably or being funded. Therefore, the comment stated that projects that do not incorporate these standards should not be penalized. One comment stated ''if the additional construction cost is not fully offset by the increased energy savings or the ability to avoid buying from the Grid, the sponsor can receive a credit for the difference'' and ''[i]f energy rates increase in the future and start to turn a profit from the sales, [the transit agency] should not have to fully pay back the credit.'' According to the comment, ''[t]his potential additional source of revenue could be an incentive to build.''

Response: FTA agrees LEED or similar certifications are useful to understand how well sensitivity to environmental concerns has been incorporated by project sponsors into project development. However, while having elements of a project LEED certified demonstrates good environmental behavior by the project sponsor, it is not a meaningful measure of the greater environmental performance of a well designed and implemented transit project. Nonetheless, FTA believes it is appropriate to assure the New Starts process provides incentives for good environmental practices such as environmentally-sensitive design and development, which may have additional costs to them. To assure there are incentives for pursing LEED-certification or other similar rating systems, rather than disincentives, FTA intends to subtract the additional costs of such environmental friendly features in the cost effectiveness calculation.

2. Low impact development (LID)

Comment: A few comments stated FTA should encourage sustainable design and credit projects that use it. Several comments said FTA should consider the added costs of implementing LID or sustainable design even if they increase the capital cost in the short term but lead to long-term operating efficiencies and reduced costs. A couple of comments stated FTA should encourage sustainable infrastructure, but not mandate it. Another comment suggested LID be included in the environmental benefits criterion to encourage these practices, but it should not make the whole difference between a project that gets funding and one that does not. Another comment stated FTA should allow more flexibility in examining sustainability and environmental impacts in design decisions. One comment said LID should not be included in the environmental benefits criterion.

Response: As with LEED certification, although various LID methods demonstrate good environmental behavior by the project sponsor, their use is not a meaningful measure of the greater environmental performance of a well designed and implemented transit project. However, FTA is proposing to subtract the additional costs of environmentally friendly features, such as LID, from the calculation of cost effectiveness so there is not a disincentive to using LID methods.

3. Alternative Energy

Comment: FTA received several comments on whether alternative energy production should be considered in the environmental benefits criterion. A few comments stated it should be considered and two comments opposed its inclusion. One comment opposed to its inclusion stated that it should be considered once costs of alternative energy source production decrease. Another comment suggested alternative energy production be included in the environmental benefits criterion to encourage its use, but should not constitute the whole difference between a project that receives funding and one that does not. Several comments stated FTA should consider the added cost associated with generating alternative energy.

Response: FTA believes that, while the incorporation of alternative energy production may be a feature of a transit investment, the added burden of determining the amount of energy produced is unlikely to produce a measurable difference compared to the amount of energy saved as a result of reduced vehicular travel. However, FTA is proposing to exclude the additional costs of certain environmentally friendly practices from the calculation of cost effectiveness.

Environmental Benefits Question 6: ''In measuring the environmental benefits of a project, how might FTA take into account the goals and objectives of Executive Order 13514 [Federal Leadership in Environmental, Energy, and Economic Performance]? Should a project be evaluated and rated on how well it maximizes the land use efficiencies created through locating the project in areas that facilitate sustainable development?''

1. Executive Order 13514

Comment: A number of comments responded to the question regarding how FTA might take into account the goals and objectives of Executive Order 13514, ''Federal Leadership in Environmental, Energy and Economic Performance.'' A few comments suggested that FTA include the goals

and objectives of the Executive Order. The comments suggested FTA assess the change in greenhouse gas emissions resulting from implementation of the proposed project. Another comment noted it is important to consider projects that facilitate sustainable development because the carbon footprint of any individual transit project is small in a regional context. The comment added FTA should provide credit for these types of projects by increasing the weight given for avoided trips and other land use and economic development criteria in the project justification rating. A couple of comments stated FTA should not include the goals and objectives of the Executive Order in the environmental benefits criterion. A couple of comments added the goals and objectives of the Executive Order are largely addressed in the land use criterion.

Another comment added the goals of the Executive Order are agencywide and, therefore, may not be easily translated to the project level. A comment suggested innovation proposals be encouraged (e.g., ''green'' methods in proposed facilities and construction methods) but not included in project ratings.

Response: FTA believes the principles of the Executive Order will be addressed in the quantification of the direct and indirect environmental benefits of proposed transit investments, including the degree to which policies supporting transit oriented development are in place, as accounted for in the economic development criterion. FTA believes there is no need to further address the Executive Order in the environmental benefits criterion.

2. Land Use Efficiency

Comment: FTA received a substantial number of comments on whether a project should be rated on how well it maximizes land use efficiencies by being located in an area that facilitates sustainable development.

A large number of comments stated that encouragement of compact/sustainable development and sprawl reduction should be considered in the environmental benefits criterion. Another comment stated FTA should give credit through the environmental benefits criterion for transit's role in retaining existing dense, energy efficient land use patterns as well as its role in encouraging new energy per efficient land use patterns.

Several comments stated FTA should encourage transit oriented development by quantifying the additional development that can be built due to implementation of the transit project. In particular, one comment stated communities should be rewarded for investing in transit oriented development that preserves access to affordable housing. A few comments stated FTA should reward communities that develop plans to revitalize communities.

One of the comments specified FTA should also give consideration to the potential water quality improvements from more compact development patterns facilitated by fixed guideway transit service. Another comment stated such a project (in a densely developed, transit rich area) may also generate ''smart growth'' land use and development patterns that reduce short automobile trips or encourage walking or biking, thereby reducing congestion and encouraging healthier lifestyles.

One comment suggested compact land development can be measured by comparing models of development patterns with and without the proposed project. A couple of comments suggested anticipated land use impacts of projects would likely be easier to measure early in project planning than mitigation or energy impacts.

One comment recommended FTA not lower a proposed project's rating if the project is located in a suburban area where existing land uses are less dense, because these areas need transit to create a market for more compact development.

Response: FTA believes future estimated changes in development patterns are actually better addressed in the economic development criterion and that the land use criterion should focus instead on existing. Thus, FTA is proposing at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. Public transportation projects can support increased density and clustering of development in a way that can reduce motorized travel, thereby improving the environment. FTA notes, however, the practice of actually predicting the changes in development patterns that will occur as a result of implementation of the proposed project is not particularly well developed. While research is under way, for example, through the Transit Cooperative Research Program, presently there are no well developed tools that can easily be applied by all project sponsors. FTA agrees policies that encourage transit oriented development can help assure a positive impact on development patterns is actually achieved. But FTA believes whether such policies are in place and are being effectively implemented can be better assessed in the economic development criterion.

While FTA believes water quality impacts can be cited as benefits of public transportation investments, they usually come as a secondary effect resulting from the denser, more compact development patterns that transit projects can foster.

In sum, FTA believes the economic development criterion should account for the degree to which the project is likely to result in additional environmental benefits due to compact, more-dense development patterns. However, given the lack of readily available tools, FTA intends to make evaluation of these secondary impacts voluntary.

Environmental Benefits Question 7: ''To what extent, if any, can technology improvements—lower carbon transport technologies, the use of emerging light weight materials, improved engine designs, or bio-fuel applications, for example—be said to reflect environmental benefits of transit proposals? How would such improvements be measured and compared?''

Comment: FTA received a large number of comments regarding whether the environmental benefits criterion should consider technology improvements such as use of lower carbon transport technologies or use of emerging light weight materials.

Several comments stated technology improvements should be considered. A couple of comments provided caveats that use of these technologies should not be required, but treated as extra credit instead. Another comment stated FTA should consider technology improvements as they pertain to a project's operation, but that the measure should not necessarily be based on the use of new technology. This comment suggested technology improvements could be measured by composition of fleet technologies and fleet age, as well as reductions in greenhouse gas emissions.

Several comments suggested use of sustainable technologies should be encouraged, but it should not be a part of the environmental benefits criterion. One comment noted it would be difficult to identify predictable and measureable differences between transit projects with a technology metric and instead recommended that the added cost of a sustainable technology could

be an item removed from the calculation of cost effectiveness. A couple of comments noted measures of environmental benefits should be derived from the operation of the project. Another comment stated projects should not receive extra credit in the evaluation process for technology improvements. One comment stated FTA should be careful not to be overly prescriptive with the application of a technology metric to maintain competitive bidding and innovation.

Response: FTA agrees it would be difficult to include use of environmentally friendly technologies in the environmental benefits criterion. However, FTA does not want the New Starts evaluation process to provide disincentives to their use. Accordingly, FTA is proposing to eliminate the additional costs of such technological enhancements from the calculation of cost effectiveness.

Environmental Benefits Question 8: ''Should environmental benefits be included in the cost effectiveness measure? How can environmental benefits be compared across projects, and incorporated into FTA funding decisions?''

Comments on this question are summarized under the section of this NPRM focused on cost effectiveness.

D. Economic Development

Measuring Economic Development

Economic Development Question 1: ''How might FTA better measure the impact of transit on local land use patterns and/or economic development (ED)?''

Comment: A substantial number of comments were received in response to this question. Most of the comments suggested generally that FTA could improve its measure of the impact of transit on local land use patterns or economic development.

Several comments addressed how FTA should consider its evaluations of land use policies and plans and economic development differently. Over half of these comments emphasized considering future development in conjunction with land use and three noted that both existing and future land use policies and plans should be used to consider land use.

A number of comments related to the consideration of the potential impact of a project on future development. Most of these comments support this idea. One of these comments suggested looking at new business attracted to the area due to the implementation of transit (as compared to locating on or near a highway), expansion of established businesses in the community, and the ability to retain businesses. One opposing comment indicated that measuring the economic effect of transit investments would be difficult because of industry clusters or geographic concentrations of interconnected employment centers and the role of transit in enhancing linkages between such clusters.

A number of comments noted FTA should consider additional measures for evaluating land use and/or economic development, including changes in employment densities and household income within the transit corridor and assigning credit for enhanced transportation connectivity. A third of these comments suggested FTA give extra credit in the New Starts evaluation process to projects with economic development effects, with one suggesting that credit be given to projects located in areas with local government incentives to encourage economic development and one suggesting credit be given for enhanced transportation connectivity. A third of these comments also referenced using changes in property values as an additional measure of economic development effects. On the other hand, one comment opposed using changes in land value as an economic development measure due to the sensitivity of market cycles.

A few comments proposed different methodologies to determine the effects of transit on land use and/or economic development, including quantitative studies (e.g., before and after studies), a hybrid framework of quantitative and qualitative measures, and satellite imaging and windshield surveys.

A few of the comments pertained to development and redevelopment impacts. Most of these comments supported consideration of these impacts and one opposed. The opposing comment noted that the first level of analysis should be how well the project fits with the goals and objectives of the community.

A small number of comments recommended emphasizing transit-oriented development and market strength.

One comment advised that measuring the extent to which a more efficient network links multiple centers (as opposed to a discrete investment, either as an initial starter segment or an extension to an existing system) will show how a project enhances economic development.

One comment supported the belief that implementing transit investments can be an enormous employment generator.

One comment suggested that when finding alternatives to the single occupancy vehicle, one must consider the costs to individuals (consumers), the costs of public dollars, the ability to leverage public dollars with private investments for an acceptable return on investments to all parties, and the creation of wealth (jobs).

A couple of comments recommended the economic development effects criterion focus on economic value creation or assess the value added for mature and newer urban areas because capital invested in different areas could produce different returns.

One comment stated FTA should not give credit to projects that maximize land use efficiencies in an area that already has taken steps to facilitate sustainable development.

One comment encouraged FTA to consider a funding model where station-area improvements are funded largely through value capture, while transit fares underwrite operations, maintenance, and capital investments in rolling stock.

One comment suggested developing more accurate modeling techniques capable of recognizing land use differences resulting from implementation of transit.

One comment stated the economics of a project and the degree to which a project cannot develop good public relations with its surrounding community should be weighed.

One comment noted that in selecting a streetcar as the locally preferred alternative for their area, the study team considered the estimated potential economic benefits resulting from real estate redevelopment adjacent to the streetcar line. This included estimates (based on a range of scenarios) of increased occupancy of existing structures, higher rents, and potential new construction on vacant parcels. (Also considered were the income, employment, and economic output effects of construction.)

Response: FTA agrees an improved economic development criterion is necessary. The current measure focuses on adopted plans and policies that would support economic development. It does not address the degree to which the proposed project itself produces economic development effects. FTA believes it is important to focus both on the plans and policies supporting future development, as well as the accessibility improvements that result from implementation of the proposed project.

FTA believes one primary economic development benefit that should be

evaluated is the effect that a major transit capital investment can have on clustering development. Such clustering produces what economists refer to as an ''agglomeration'' benefit. In essence, because firms are able to do business in an area in which similar economic activity is taking place, transaction costs are lowered, productivity is increased, additional employment is created, and overall, there are increased levels of economic activity. Clustered development can also reduce the environmental impacts of travel (such as air pollution, greenhouse gas emissions, energy use, safety, etc.) and the costs of providing public infrastructure compared to un-clustered development. Such clustering occurs because the transit investment increases the accessibility of locations around it by reducing the cost of travel to those locations and because transit supportive policies are developed to concentrate development at those locations.

FTA believes focusing on the two main factors that produce these benefits —how the proposed project improves the accessibility of locations along its route, and the strength of the policies in place to support clustered development around the transit project—is the best way to determine how likely it is the project will produce economic development benefits. FTA agrees that, in the long run, implementation of the transit project is likely to increase housing and employment, occupancy rates, property values, rents, new construction, and overall economic activity. However, FTA believes it is extremely difficult to forecast such long-term changes. FTA agrees there are a number of tools for determining the potential for these changes, such as use of land records, geographical information systems, and windshield surveys, as well as approaches for determining the impacts after a project is implemented such as before-and-after studies. These studies have demonstrated the key factors leading to changes in these indicators are the relative change in accessibility brought about by the project and how well the project is supported by appropriate local land use and development policies. However, there are not currently available any easy-to-apply and accurate methods for actually predicting the economic development impact. An ongoing Transit Cooperative Research Program (TCRP) is addressing the issue of improved predictive techniques. FTA agrees there are certain policies, such as those that foster transit oriented development that can have a large positive impact on the development outcome of a project. Thus, FTA is proposing to measure economic-development effects based on the plans and policies to support economic development proximate to the project and the demonstrated performance of the policies. FTA is proposing to evaluate the transit supportive plans and policies and demonstrated performance of those plans and policies in a manner that is similar to the existing practice. At the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

Economic Development Question 2: ''Should FTA continue to use its current approach for evaluating the economic development effects of major transit investments?''

Comment: A substantial number of comments were received in response to this question. Approximately one third of the comments pertained to the weight given to the economic development effects criterion in the rating of project justification, and most supported increasing the weight. One of the supporting comments also suggested eliminating the environmental benefits criterion. One comment partly supported increasing the weight of the economic development criterion by suggesting prioritization of supportive land use policies above existing land use and past performance of policies. One comment opposed consideration of the economic development effects criterion as a major factor for evaluation and rating.

A number of comments suggested simplification of the economic development effects criterion. A small number of these comments advised adjustment of submittal requirements based upon the phase of project development. For instance, according to those comments, when a project sponsor is seeking entry into preliminary engineering, FTA should only include a review of local policies in place that support the transit investment and encourage development/redevelopment.

Several comments suggested FTA revise its approach to measuring economic development by considering other factors. A small number of these comments stated the current approach is limited because it assumes economic development is a zero sum game within a region and does not account for regional growth that might be a function of significant improvements in regional mobility from connecting major population and employment centers. A couple of the comments recommended looking at labor statistics to determine the types of jobs needed in an area. One comment proposed special consideration (preference) should be given to viable projects in economically distressed areas. One comment proposed, for each region, giving consideration to global competitiveness.

A few comments stated FTA must recognize that public transit agencies have limited direct impact on land use policies and land uses (via the properties that they actually own) versus the tremendous indirect impacts that follow-on from transit investments. One of these comments also added project sponsors of proposed streetcar projects are often municipalities rather than independent transit agencies, and thus can directly impact those land use decisions.

Response: With respect to the weight assigned to the economic development effects criterion, FTA must follow the law, which calls for each of the six specified criteria to be given ''comparable, but not necessarily equal'' weight. FTA cannot eliminate either the economic development effects or environmental benefits criteria as they are both required by law.

FTA agrees the economic development effects criterion should be as simple as possible and that it should depend on the project development stage—the level of detail and commitment to specific policies should be greater as the project moves from preliminary engineering to final design and construction funding. FTA already takes this approach in its evaluation of the land use, economic development, and local financial commitment criteria. FTA is proposing an approach that assesses how well local plans and policies support clustered development around the proposed project without requiring that a detailed forecast of economic development be made. At the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion.

FTA believes it should focus on the likelihood of the project fostering development, rather than attempting to forecast how much development will occur, whether or not there is an increase in net regional development, or whether there is just a redistribution of

the development forecast for the region. FTA agrees the kinds of jobs produced and whether a project is located in an area of economic distress are important issues and proposes to take these issues into account, at the project sponsor's option. In addition, FTA plans to report under the economic development effects criterion the number of design, construction and operations jobs expected to be created with implementation of the project.

FTA agrees public transit agencies have limited direct impact on local land use plans and policies. But because these are major transit investments, they should be supported by local policies no matter who is responsible in the region for developing the policies. Hence, it is appropriate for FTA to assess whether the region and local jurisdictions are supportive of a major investment of Federal funds in that region.

Economic Development Question 3: ''Should FTA define economic development differently? If so, how?''

Comment: A substantial number of comments were received in response to this question. The majority of the comments supported defining economic development differently, and a number were opposed.

Of the comments supporting a different definition of economic development, most offered an alternative. Several noted economic development should refer to increases in underlying economic strength, as measured by increases in employment, in gross domestic product, or in wealth. One comment stated economic development should be defined as the increase in economic activity that stems from the transit investment and from the accompanying improvements in livability and other benefits that accrue from permanent land use changes that link to economic activity. Another comment noted the increase in economic activity may be difficult to quantify. A couple of comments indicated increased economic activity should be evaluated based on the increase in transit trips. One comment stated the current measures for economic development give substantial consideration to ''existing pedestrian-friendly station areas'' and to ''higher density existing conditions.'' These considerations inevitably favor existing, developed and often wealthy areas over developing communities. In contrast, one comment favored promoting economic development in areas that are transit deficient, by considering the potential for future, not existing, development performance. A couple of comments indicated economic development should be based on the estimated direct impact on individual household costs and benefits (i.e., housing affordability) resulting from implementation of the transit project. Other comments stated economic development should be defined relative to improved accessibility to jobs and services for low-income populations and minorities. A small number of comments stated FTA needs to redefine economic development, moving away from trying to measure overall economic activity by using increasing land values as a ''proxy'' for this activity, and move more specifically towards measuring employment and transit connectivity. Another comment observed the current approach appears to be ''justifying'' the project via the economic benefits identified by the sponsor, rather than using the measurable impacts of the project.

One comment noted FTA should not be in the business of economic development. It should be in the business of providing easy and affordable access to transit.

Of the comments opposing any change to the current definition of economic development, one comment opposed changing the current definition so long as the criterion included an assessment of the degree to which project sponsors demonstrated an understanding of how to stimulate transit-oriented development.

Response: FTA agrees it should have in mind the economic development outcomes of a proposed project as the basis for assessing the economic development criterion; with a focus on increased economic strength, such as employment levels, gross domestic product, and wealth. As noted earlier, FTA believes these types of economic development benefits occur because implementation of a proposed project produces agglomeration effects through the clustering of development around the proposed project. FTA agrees these agglomeration effects may be difficult to quantify, but are likely to be related to how a project produces enhanced accessibility at various locations around which development could be clustered. FTA believes the number of transit trips taken on the project may be a useful indicator of this enhanced accessibility. FTA notes changes in accessibility result from changes in travel costs, rather than changes in housing costs. FTA evaluates mobility improvements (and hence changes in accessibility) for persons with lower incomes as part of its mobility improvements and cost effectiveness criteria. FTA agrees land value in particular is very difficult to quantify and the change in accessibility is the more important direct effect of a project that can enhance economic activity. FTA agrees it is the performance of the project that determines whether or not it is likely to have economic development benefits.

FTA agrees its primary focus is to improve public transportation, but notes that economic development outcomes should be evaluated to help determine which public transportation improvements it should support. The section-by-section analysis that follows this response to comments provides more detail on how FTA plans to measure the economic development effects of proposed projects.

Economic Development Question 4: ''Should FTA use either a qualitative or a quantitative approach (or both) for evaluating the economic development effects of New Starts and Small Starts projects? Should FTA consider a qualitative approach for evaluating land use policies or a quantitative approach for predicting changes in land use values and patterns (or both) as a proxy for evaluating economic development benefits?''

Comment: A substantial number of comments responded to the question of whether FTA should use a qualitative or a quantitative approach (or both) for evaluating the economic development effects of New Starts and Small Starts projects.

For the first question, several respondents indicated both quantitative and quantitative approaches are necessary for evaluating economic development.

A substantial number of comments did not support the use of both quantitative and qualitative approaches, with most suggesting using only a qualitative approach. Only about a fifth of these comments recommended using only a quantitative approach. One suggested using clear and objective quantitative measures of market realities.

More than half of those who responded to the second part of this question supported a qualitative approach for evaluating land use policies in lieu of predicting changes in land use values and patterns as a proxy for evaluating economic development benefits. None of the comments supported a quantitative approach for predicting changes in land use values and patterns for evaluating economic development benefits. One comment did not support either a qualitative or a quantitative approach for evaluating economic development; instead, the comment simply noted that the

appropriate scale should be corridor based.

One comment did not support either a qualitative or a quantitative approach, preferring an alternative definition for economic development not based on land use. A few comments did not identify a preference for either a qualitative or a quantitative approach.

The comments were split evenly for and against using land use patterns and values as a proxy for evaluating economic development. The comments in support of using land use tended to view it as a subset of economic development. One comment suggested that FTA consider estimated changes in land values as evidence of potential economic growth, using such measures as block and intersection density, existing and projected population, absorption and vacancy rates, station area and corridor land values, residential and commercial real estate values, and estimates of development of underused land. One comment recommended FTA consider the density of commercial and residential development using employment within one-half mile of stations and population within one-quarter mile of stations. In addition, a comment stated FTA should consider the changes in the quality (''value'') of jobs created in the corridor by the investment in an alternative transportation mode.

Those against using land use as a proxy for evaluating economic development recommended using economic measures such as employment, wages, and revenues instead. The recommendation was based on the idea that doing so would avoid double-counting the benefits that come from land use changes themselves and that forecasting land use assumptions is difficult. In addition, one comment said using land use as a proxy for economic development overlooks other benefits including new jobs, retail sales, tax revenues, and agglomeration effects.

Response: FTA agrees with comments opposed to using a purely quantitative measure for the economic development criterion. FTA is proposing to allow a project sponsor, at its option, to estimate indirect changes in VMT resulting from changes in development patterns, and calculate the resulting environmental benefits, monetize them, and compare them to the annualized capital and operating cost of the project. While forecasting the amount of economic development effects resulting from agglomeration effects would seem to have value, the analytical challenges of doing so are too great. As noted earlier, tools to accurately forecast land value changes, changes in aggregate regional employment, or changes in local gross domestic product are often not readily available and thus this analysis is optional.

In particular, FTA agrees the primary measure of the economic development criterion should be an assessment of the existence of transit supportive land use plans and policies. These create a foundation for changes in development patterns and land values that would result from a major transit capital investment. Hence, they are an important part of a proxy measure for assessing economic development benefits. But as already noted, FTA is also proposing to allow project sponsors, at their option, to evaluate quantitatively the likely performance of the project itself in producing economic development benefits. FTA believes that providing the option for a project sponsor to conduct such scenario-testing would be an effective way of addressing this issue in a partially quantitative way. By making this scenario testing optional rather than mandatory, FTA is avoiding placing undue burden on project sponsors.

FTA does not believe that addressing land use policies as part of the economic development criterion represents inappropriate double-counting. FTA is proposing to use only existing population, employment, and publically supported housing within station areas in its land use criterion.

Land Use and Economic Development

Economic Development Question 5: ''What scale should be used to measure economic development? At a corridor level or at the metropolitan area level?''

A large number of comments were received in response to this question. Of those responding, just under half recommended measuring economic development only at the corridor level. Some of these comments mentioned the economic development criterion is very important for urban circulators and streetcars projects in particular, stating these types of projects are often primarily justified by their economic development benefits. Thus, the comments indicated these projects should be required to demonstrate they can support sufficient density of commercial and residential development to justify the Federal investment.

Two of the comments recommended FTA require project sponsors to develop analyses of projected development including estimates of employment growth anticipated within the corridor. They stated economic analyses should describe the geographic range of economic impacts and effects on nearby corridors and any interaction between corridors.

Over half the comments in this area recommended measuring economic development only at the metropolitan area or regional level. One comment stated economic development should refer to increases in underlying economic strength, as measured by increases in employment, increases in gross domestic product or increases in wealth. The comment indicated these are not easily measured at the corridor level but are instead best measured at the regional or national level. One submission stated such increases in employment, productivity or wealth may result, in part, from the increased accessibility and reductions in the cost of travel resulting from implementation of a proposed transit investment. The comment indicated impacts are almost always observed and measured regionally, not just in the area of the transit investment, since the measures are ''macro'' in nature and lend themselves to regional measurement.

About a third of the comments in this area recommended measuring economic development at both the corridor and metropolitan area/regional levels. Several comments pointed out that the metropolitan area considered in measuring economic development need not be coincident with the jurisdictional boundaries of the metropolitan planning organization (MPO).

Additionally, two comments recommended measuring economic development solely at the station area level, while several comments recommended using both the station area and corridor levels. Two comments recommended using both station area and metropolitan area or regional levels to measure economic development.

Several comments recommended using multiple scales, including station area, corridor, and regional, to measure economic development. Two comments noted multiple scales are necessary to capture relevant aspects of economic development, such as employment, land use, and the multiplier effects of direct, indirect, and induced spending in the local, regional and state economies. One comment stated the appropriate scale for measuring economic development depends on how economic development is defined, while another comment noted that the scale should be comparable to the project type. Another comment noted different scales should be used for Small Starts projects than for New Starts projects, with Small Starts projects best evaluated at the corridor level. One comment stated economic development should be measured

individually for each city/jurisdiction within the transit corridor.

Response: FTA believes it is appropriate to consider economic development at both the corridor and regional level. FTA agrees the economic development effects of a proposed transit project are concentrated in the corridor or sub-area served by the project. However, FTA also believes these impacts have an effect on the economy of the region as a whole.

FTA agrees project sponsors should be required to demonstrate sufficient population and employment densities around proposed projects as a primary evaluation factor. FTA believes this is addressed, to an extent, by the degree to which the project, taken together with the development in the project corridor, produces sufficient ridership to be cost effective. Further, in the land use criterion, FTA is proposing to evaluate existing population and employment densities as well as existing publically supported housing. In addition, in the economic development effects criterion, FTA is proposing to allow project sponsors, at their option, to estimate future employment and residential development in the corridor.

FTA agrees increases in underlying regional economic strength (such as employment, gross domestic project, or overall regional wealth) are the key economic development outcomes that should be evaluated. However, FTA does not believe it is necessary to forecast such effects directly. FTA agrees they are not easily measured at the corridor level, but also believes that tools do not exist to readily measure them at the regional level either. Accordingly, FTA believes it is better to focus on the factors that are likely to produce these regional effects, namely the degree to which a proposed project is estimated to improve accessibility and the kinds and quality of local land use and economic development policies in place that will foster clustered development. Under this approach, the exact boundaries of the corridor or region being considered are not really important.

Economic Development Question 6: ''How should FTA distinguish between the land use effects and the economic development effects of a proposed project? How should they be measured?''

Comment: A substantial number of comments were received in response to the question of distinguishing between land use and economic development. Of those responding to this question, nearly all concurred with the need to distinguish between the land use and economic development effects of a proposed project. Only a few comments stated there was no need for FTA to distinguish between land use and economic development effects, with one of these noting that land use and economic development effects are not transportation outcomes but are instead inputs into determining the likely success of a transit project.

Approximately half of the comments concurring in the need to distinguish between the land use and economic development effects of a proposed project recommended an approach to use for making the distinction. These are summarized below.

Several comments recommended distinguishing between the land use and the economic development effects of a proposed project on the scale of development that may be expected to occur. A number of comments recommended FTA retain its current approach of distinguishing between land use and economic development effects. A small number of comments recommended evaluating how much a project may be supported by revenues produced from the increase in land values around it to distinguish between land use and economic development effects. One comment recommended using the creation of economic value, e.g., increases in gross domestic product or wealth, to distinguish between land use and economic development effects. One comment recommended differentiating between future land use patterns and future development to distinguish between land use and economic development effects. One comment suggested real estate development be considered in evaluating land use effects and the economic development effects be measured by activity levels, such as employment, retail sales, etc.

A number of comments suggested measures for considering land use effects. A few of these recommended using past performance in addition to existing land use policies and plans. One recommended using local real estate market conditions for measuring land use. Another recommended evaluating increases in the square footage of development to assess the level of real estate development activity.

A large number of comments suggested measures for considering economic development effects. A few comments recommended retaining the current evaluation of land use plans and policies and the demonstrated performance of those plans and policies. A small number of comments recommended using demographic changes such as changes in population and employment densities and household income. A couple of comments recommended using the increase in the underlying economic strength or economic activity of the region or corridor (the choice would depend on the scale selected for the measure). Individual comments were submitted on each of the following measures: change in land value; the project's ability to generate economic development; and change in land use and economic development with the creation of economic value.

Response: FTA agrees it should distinguish between economic development and land use when evaluating projects. To do so, FTA is proposing to focus the assessment of land use on existing population and employment densities and publically supported housing in the corridor that will support the transit investment. FTA believes economic development effects should be assessed based on the land use patterns and resulting development that is likely to result from implementation of the project and the plans and policies in place to support transit oriented development. FTA is proposing to allow project sponsors, at their option, to also analyze the magnitude of the development effects. FTA agrees that land use and economic development are not direct transportation outcomes of the project. Land use can be considered an input to achieving certain transportation outcomes. However, economic development is an outcome of the project that, even if not a direct transportation outcome, is a very important aspect of why these projects are implemented. FTA does not agree it should distinguish between land use and economic development based on the scale of the project. These impacts should be part of the assessment, no matter the project scale. While value capture is an important tool in finding ways to cover the cost of a transit project, whether or not value capture is used more properly belongs in the evaluation of local financial commitment rather than economic development. FTA believes it is appropriate to think of creation of economic value and the activity which takes place in development around a transit investment as the kind of things that represent economic development. As stated earlier, however, FTA does not believe it is necessary to explicitly quantify and value such factors.

FTA appreciates the suggestions made for measures for economic development. FTA believes each of the specific measures has merit, but is concerned about the ability of project sponsors to

forecast changes in household income, property values, etc., given readily available tools. Instead, FTA is proposing to evaluate how likely it is that such changes will take place given the land use plans and policies in place (as a required feature of the measure for economic development) and how well the project improves accessibility (through scenario testing, at the project sponsor's option).

Economic Development Question 7: ''Can a New Starts or Small Starts project generate new economic development that would otherwise not have occurred in the surrounding area? If so, how might that economic development be measured? Should FTA consider the overall economic health of a metropolitan area when estimating the potential for a New Starts or Small Starts project to foster economic development?''

Comment: A large number of comments addressed whether proposed transit projects generate new economic development that would otherwise not have occurred in the surrounding area. Most of these comments indicated other matters need to be addressed and pointed to other concerns, such as whether the resulting economic development would reduce VMT, improve health and social impacts (e.g., environmental justice, high-need, vulnerable communities), allow more money to stay in the local economy rather than being exported to oil and auto producers, and lead to location efficiencies. One comment noted it is worth making the distinction between new economic activity generated by a transit project and economic activity that was going to take place anyway but gets moved to a location near transit. Another comment suggested that how FTA distinguishes between new economic development in a region versus relocated activity is irrelevant. This comment suggested the location efficiency that results from increased density around a transit system can be used as a measure instead and that much of the benefit comes from creating a more efficient system rather than net regional gain. One comment stated it should not matter to FTA whether investment is ''relocated'' due to the transit project (as opposed to being newly attracted development to a region). Rather, the comment suggested, it matters that the investment may yield a higher return, both to the developer and to society, through increased or enhanced economic returns from location efficiency. The comment stated location efficiency could be measured by jobs, homes, and services brought within a specified proximity of transit.

One commenter stated in their metropolitan area, New Starts and Small Starts projects have generated new economic development rather than shifting it from other locations.

Most comments addressing economic development implied that New and Small Starts projects generate economic development. The suggestions submitted, by one or more comments, for possible quantitative measures of economic development were:

a. Private return on investment (ROI) measured by a capitalization rate on the dollar amount invested in the project. In this case, the public ROI would be weighed against the costs of the alternatives in addition to the return of the dollars invested. Factors addressed would be higher land values, jobs, and reduction in capital and operating expenses for the transportation modes over time and/or the life of the project. Reductions in personal household transportation costs would also be evaluated.

b. An Affordability Index based on infill development. These comments suggested measuring economic development in terms not related to land use values could include calculations similar to the combined ''housing and transportation affordability'' index work that has come into use by some.

c. Possible building volume (at a set value per square foot) in the future minus building volume today, multiplied by probability. This comment suggested the calculation could include estimating maximum possible capital investment as the difference between entitled building volume and current building volume. This value could be multiplied by probability of success to produce an estimate of economic development potential. The ratio of forecasted (or historic) growth in gross local domestic product, divided by the national average, could be used to estimate the probability that economic development in a specific location will actually occur.

d. Use of the LEED 2009 Neighborhood Development rating system (LEED–ND). LEED–ND can be used to analyze the existing land around the proposed transit project to determine how accessible stations are without an automobile. This could be accomplished by prioritizing the funding of transit projects in locations that meet metrics established in LEED–ND, such as the smart location and linkage prerequisites and credits. For example, funding could be prioritized for locations that meet the density requirements outlined as ''Neighborhood Pattern & Development (NPD) Prerequisite 2: Compact Development'' in the LEED process.

e. Quantitative rating thresholds using data already reported to FTA. Suggested factors to be indexed include: (1) Base year and forecast year households, population, and employment and associated densities for the region as a whole, the corridor, the central business district, and station areas; (2) existing and planned floor area ratios; (3) existing and planned densities and scale of development included in existing and in-progress zoning changes, and referenced in station area land use plans; (4) anticipated development within station areas, including estimations of development by type, square feet, etc., as reported in development market studies and assessment of developable parcels; (5) amounts of development, including square feet, number of housing units (including affordable units), already occurring or proposed within station areas; (6) examples of recent and proposed development activity that reflect transit-supportive densities and other transit-oriented development (TOD) features. The comment did not propose how these factors would be weighted.

f. Gross Regional Product statistics.

g. Geographic and land use mix.

h. Measured density, mixed land uses, proximity to transit, quality of the walking/biking environment, and per capita parking in existing communities (not whole metropolitan areas) and the measured VMT and mode split to predict the results of transit additions and infill development.

i. Change in percentage of developable or re-developable land.

j. Growth in total employment and/or change in the percent of unemployment expected near stations and regionally.

k. Sales tax receipts.

l. Predicted increases in educational attainment.

m. Increases in wealth and wages in metropolitan areas.

n. Business growth/small business starts and successes perhaps by reduction in long distance travel of goods.

o. Changes in land use due to site location of transit, then measure property tax assessments in a specified concentric circle from transit center.

p. Changes in tax assessments, vacancy rates, rent rates and per foot sales prices. A best practices benchmark could be used.

Other comments suggested a range of evaluation approaches including:

a. Evaluate development patterns over the past five to ten years, such as the percentage of development downtown and near transit versus in ''green fields'' or in the exurbs, as well as the character of that development, such as average densities and other factors that can more reliably measure growth management success.

b. Use quantitative approaches for summarizing changes in land value as the ultimate value ''puddles'' in the land not the assets on the land.

c. Require each transportation investment, including transit, to have a minimum of value capture (tolling, TIF, private property upside value sharing, etc.) to qualify for Federal funding. There should be higher ratings for projects serving lower-income areas.

d. Explicitly call out residential development in the measures to make it clear that more housing units are needed. Have a new rating that ensures the commitment to a minimum share of new residential development around proposed transit stations that is affordable to moderate-income families and will remain affordable for as long as the transit stations are in operation. Have a rating factor that rewards projects that serve areas with existing subsidized housing and that plan to preserve this important resource after the transit investment is made by using such policies as incentive zoning, voluntary inclusionary zoning, and density bonuses.

e. Measure the increase in regional transit accessibility as a good indication of the potential changes in land values and affordability of housing due to reduced transportation commuting costs.

f. Compare the VMT induced by development at an outlying location with the VMT induced by development located at a central location served by transit.

g. Use data providing the true cost of auto ownership and the direct reductions in annual costs plus any reduction that may be realized by alternative public transportation investment.

h. Measure the direct impact on individual household costs and benefits.

i. Use parcel-level data on property assessments, number of jobs, and incomes in the transit corridor.

j. Use measures of the impact on community access to jobs, housing, education, and health care rather than complex models that are based on existing patterns of transportation and development.

k. Measure actual funds put forward for redevelopment. The provision of local overmatch and/or amount of developer/private money used should be considered heavily as the best measure of land use changing potential.

Several comments responded to whether FTA should consider the overall economic health of a metropolitan area in the evaluation of economic development. A couple of comments suggested the overall economic health of individual communities is not applicable, but did not explicitly address the matter of the metropolitan area. One comment noted the underlying economic development strategy of the region, and whether plans and policies are in place to foster economic growth are important. One of the comments recommended using metrics in existing communities, not whole metropolitan areas, to predict the results of transit additions and infill development.

One comment suggested new business could be attracted to an area due to transit, (as compared to locating on or near a highway) and recommended that FTA consider expansion of established businesses in the community and the ability to retain business as part of the evaluation process.

Response: FTA agrees whether or not a major transit capital investment produces net economic development in a region or just redistributes the development that would have occurred in a region otherwise is less important than assessing the particular transportation and environmental benefits of the project. FTA agrees the main economic development effects of proposed transit projects come from supporting clustered development around the investment that can result in agglomeration effects on net economic activity and in environmental benefits such as changes in energy use, greenhouse gas emissions, and pollutant emissions. In any case, these effects are secondary to the transportation benefits. Any net regional economic benefits would be a third-order effect difficult to attribute to the investment given all the other things that affect the economic competitiveness of a particular region.

FTA appreciates the suggestions made for measuring economic development effects. In general, the quantitative approaches suggested for calculating return on investment, an affordability index, building volume changes, LEED–ND, changes in housing, employment, floor area ratios, development density, etc., all have merit. But they all are very difficult to forecast and use for evaluation purposes. Instead, FTA plans to assess the change in accessibility produced by the proposed project and the plans and policies in place. FTA will continue to explore how more quantitative metrics might be applied.

FTA also appreciates the other evaluation approaches suggested. FTA notes the evaluation approach needs to be easily applied by all project sponsors, should produce information about future outcomes, should produce information that can help distinguish projects from each other, and should not involve an inordinate amount of effort. FTA agrees even relocated land development has positive benefits and is worth considering since there are benefits to society that come from denser development. However, FTA believes it is sufficient to focus on the likelihood such effects will occur and, at the sponsor's option, the general magnitude of such effects rather than trying to forecast them explicitly. FTA believes value capture is a useful tool in evaluating local financial commitment, but does not believe it should be mandatory or considered in the economic development criterion. FTA agrees it is important to consider whether affordable housing is provided since it is important to assure that the benefits of public transportation investments are enjoyed on an equitable basis. FTA is proposing to evaluate existing publically supported housing in the corridor under the land use criterion and the plans and policies in place to maintain or increase affordable housing in the corridor under the economic development criterion. FTA agrees transit accessibility is an important part of the evaluation of economic development and is proposing an analytic approach that considers how changes in accessibility translate into economic development around a project, at the project sponsor's discretion. The change in VMT resulting from a transit investment is an important benefit, but FTA believes it is more appropriately captured in the environmental benefits criterion. Likewise, change in auto ownership and operating costs can be captured in the calculation of mobility benefits.

FTA believes using parcel level data is unnecessarily complex and instead believes a broader analytical approach focusing on changes in transit accessibility and transit supportive plans and policies is sufficient. Complex models are not needed under this approach. While funds made available for redevelopment would be a good indicator of the potential for changing land use patterns, these are long-term investments with impacts that will continue to occur for many years. Thus, current development commitments, while a useful indicator, cannot be the only consideration.

Instead, current development commitments are a part of the assessment of transit supportive plans and policies and the demonstrated performance of those policies. Finally, assessing the commitment of funds available for development would be difficult to measure, given the variability in how governmental entities and developers ''commit'' funding. Also, the degree of commitment varies along a continuum, and it would be difficult to choose what is considered ''committed'' along that continuum.

FTA agrees the overall economic health of an area is not as important as the economic development strategies in place and whether the proposed project makes certain locations more accessible. Further, FTA believes a focus on the project corridor for analytical purposes, rather than on the metropolitan area as a whole, is more important. Retaining and growing existing businesses is an important outcome of investments, and how much a project supports such outcomes should be captured through an analysis of the change in accessibility and the transit supportive plans and policies in place.

Scope of Measurement and Factors Considered

Economic Development Question 8: ''How should FTA assess whether the plans, policies, and incentives intended to promote economic development would lead to transit oriented development that provides jobs and services within the corridor? Should FTA consider the economic development effects of the project on adjacent corridors? Should FTA consider commitments by developers or funding offered by developers as evidence of future economic development benefits? What time horizon should be used for considering economic development effects?''

Comment: A very substantial number of comments were received in response to all or part of this question. Nearly half were submitted in response to how FTA should assess whether the plans, policies, and incentives intended to promote economic development would lead to transit oriented development that provides jobs and services within the corridor. Several of these comments stated FTA should assess whether the region has a coherent, cohesive set of policies in place based on a rational assessment of what is realistic given the region's existing development and its specific attributes (locational, natural, institutional, etc.). These comments further stated reasonable qualitative judgments can be made about the likely effect of combined land use, transportation and economic development policies on employment increases as well as other economic vitality factors. One comment went on to say that a significant and relevant indicator would be how well the region's economic development blueprint is integrated with its transportation strategy. One comment stated FTA should base its evaluation on whether there is a regional agreement that prioritizes transit projects in targeted growth areas. Another comment stated that FTA should consider: (1) City/regional history in delivering TOD; (2) the consistency between applicable plans and whether they are mutually supportive; (3) the existence of special designation of station areas/corridors for TOD; (4) how local zoning supports TOD; (5) whether infrastructure/public improvement/development plans are complementary; and (6) the level of developer commitments to TOD. One comment stated FTA should establish recommended best practices for TOD and give credit to jurisdictions that adopt these best practices. The proposed best practices mentioned included transit-oriented land use regulations (especially incentive or inclusionary zoning), parking requirements and pricing, affordable housing on public and private land in station areas, and the pedestrian environment around proposed stations. Several comments suggested giving credit to, strengthening support for, or giving greater emphasis to jurisdictions that adopt transit supportive policies. A couple of the comments received did not support the use of transit supportive policies for the evaluation of economic development. One comment stated projects will create larger communities that will bring greater population and density without creating the supportive policies to handle the scale of these changes resulting from the project. The other comment stated transit projects relying on park and ride access for getting ridership do little to influence land use patterns.

A large number of comments were received in response to whether FTA should consider the economic development effects of the project on adjacent corridors. Approximately half of these comments supported such consideration by FTA based on the connectivity provided by transit between locations and that the economic development impacts of a project extend beyond the transit corridor. Several of the comments stated there is significant variability in economic growth between metropolitan areas across the country due to multiple factors that affect economic development. These comments suggested this makes it difficult to isolate the effect of a discrete, specific transit investment and, therefore, leads to potential inequalities in how projects are evaluated and rated. One of the comments stated economic development in adjacent corridors is too broad a measure.

A number of comments were received in response to whether FTA should consider commitments by developers or funding offered by developers as evidence of future economic development benefits. Most of these supported consideration of developer commitments, but one was opposed due to the sensitivity of developer commitments to funding cycles. None of the comments received specifically addressed developers' offers of funding.

A large number of comments were received in response to the question regarding the time horizon used for considering economic development effects. A few generally supported balancing the accuracy of predictions (requiring a short time horizon) with the need to allow for market responses to transit investments (requiring a longer time horizon). An opposing comment suggested that given the long timeframe for conceiving, designing, and implementing transit projects, it is difficult to effectively assess developer interest and commitments at the beginning of the process. The comment indicated developers are more responsive when a Record of Decision is issued, believing that it reflects a more solid commitment to the project by local decision-makers. A few comments stated a twenty-year horizon is appropriate. A couple of comments suggested using a twenty-year or greater time horizon. One of these wrote that the time horizon should be specific to local conditions and that twenty years or greater is the best due to the long build out time for transit projects and spin-off development. There was a single comment each supporting less than twenty years and for twenty to twenty-five years.

One comment recommended the use of land use and economic development forecasts consistent with the time horizon of these forecasts used by the MPO.

One comment stated economic development is important, but in many regions there are corridors with sufficient existing development and unmet transit needs to justify a proposed project.

Response: FTA believes its review of transit supportive plans, policies, and

incentives and the demonstrated performance of those plans and policies should cover the full range of such items. Areas with ''blueprint plans'' will have identified a wide range of policies likely to support economic development around a transit investment. Regional agreements to target development around transit could also be important. FTA does not intend to establish best practices as part of the New and Small Starts evaluation process, but will certainly look to the literature to determine what policies are most likely to produce economic development benefits and evaluate whether they are in place. FTA does not agree with comments that it should discontinue evaluation of the existence of these transit oriented development plans and policies. Increasing the clustering of land uses around transit has been shown to have positive effects in reducing motorized travel and enhancing economic activity.

FTA believes it should focus most of its attention on economic development effects in the corridor in which the proposed project is located, rather than effects on adjacent corridors or the metropolitan area as a whole. The accessibility changes brought about by the project are likely to be primarily concentrated in the corridor in which it is located, and impacts outside the corridor are likely to be less significant.

FTA agrees commitments by developers are a useful indicator of the likelihood of future changes in development patterns. However, FTA believes projects being evaluated are likely to have long term impacts on development well beyond those for which commitments by developers may exist today. Accordingly, while FTA proposes to include such commitments in the evaluation process, they will not be the only factor considered.

FTA believes it is appropriate to take a longer term view of the economic development effects of proposed transit projects. FTA believes it is not necessary to look at a specific time frame, such as 20 or 25 years. Rather than make an explicit forecast of changes in development, FTA proposes to assess the transit supportive plans and policies in place and the demonstrated performance of those plans. At the sponsor's option, changes in population and employment may be estimated based on the changes in accessibility and elimination of mobility-based barriers to economic development, rather than requiring an explicit forecast of changes in development.

FTA agrees land use forecasts prepared and used by MPOs form an important part of the evaluation. But it is not clear these forecasts are complete or detailed enough to assess the impact of a particular proposed transit investment on economic development. FTA proposes that project sponsors will have the discretion to use an analytical approach to assess the scale and nature of those impacts. FTA will not require an explicit forecast using an MPO's regional land use model.

FTA agrees there are corridors that can already support a major transit investment based on existing development. FTA believes such projects will do well on the other project justification criteria in the multiple measure approach called for by law, such as mobility improvements and cost effectiveness. FTA intends to develop measures that do not penalize a project for modest but positive effects on any one of the evaluation criteria.

Economic Development Question 9: ''Should FTA consider changes in land values as evidence of potential economic growth in a station area or project corridor? How would FTA quantify recent and future changes in land values? How can FTA avoid double counting benefits given that changes in land values may be caused in part by the improved accessibility from the project that FTA already measures as part of cost effectiveness? Should FTA consider the extent to which existing affordable housing and commercial space can be maintained in the corridor after implementation of a transit project there?''

Comment: A substantial number of comments were received in response to this question. Approximately one-third of the comments responded to the portion of the question about the consideration of affordable housing. Of these, most supported such an evaluation. One of the supportive comments noted that affordable housing should be accorded one-quarter of the points that the New Starts process gives to land use and economic development. Another suggested several strategies for ensuring that a share of new development is affordable to moderate-income families stating that FTA should examine whether communities: Use projected Federal, state or local housing subsidies for development near proposed transit stations; use publicly owned land to develop affordable housing; require a share of proceeds from tax increment or tax assessment districts to be used for affordable housing near the proposed stations; adopt an employer-assisted housing policy; or use community land trusts or other shared equity homeownership mechanisms. The one opposing comment to the consideration of affordable housing stated that the goal might be unmanageable.

A large number of comments supported livability and affordability to minimize displacement of low-income households. Suggestions included: having FTA work with the Department of Housing and Urban Development (HUD) and EPA to determine opportunities for reinvestment; having FTA, HUD, and EPA give emphasis to regions that target areas for growth and commit to reducing greenhouse gas emissions and VMT; and giving consideration to the character and goals of the local community.

A large number of comments pertained to changes in land values. Several of the comments support the use of land values, but most opposed it. One of the supportive comments noted land value changes should be considered because they are an important, universal indicator of the impact of a transit project and that the value of increased accessibility should be credited as part of the economic development criterion (the external measure) rather than as part of the cost effectiveness criterion (the internal measure). A small number of comments suggested FTA consider changes in land values as evidence of potential economic development in a station area or project corridor, but provided no rationale.

The reasons given by those opposed to including land values were that land values are subject to market cycles, do not grow in a consistent manner, depend on actual use, and cannot be used to predict potential economic development accurately. Comments stated there can be extreme variability, even within one region, in methods of appraising or assessing commercial and residential values. The comments went on to say land value changes can be speculative and artificially inflated, are affected by urban economic and market factors other than transit service provision, and will not help FTA differentiate among transit projects. One comment stated the biggest increases in land values result when four factors are present: the region is growing, the transit system is growing, there are increasing levels of congestion in the region, and the region has supportive public policies. This commenter stated predicting these factors into the future presents a level of complexity the program does not need. Lastly, a comment stated using changes in land values as a metric for potential growth might interfere with many of the recent initiatives announced by FTA, HUD, and EPA and even recent studies by the

Government Accountability Office that concentrate on livable communities, environmental sustainability and affordable housing. Another comment opposing the consideration of land value changes observed that land value increases attributable to transit investments are difficult to isolate from a variety of other market and locational factors. The comment also noted it is not clear what the benefit of increased land values would be to the New Starts/Small Starts project.

One comment suggested FTA only use land use values as an indicator of economic development if the project sponsor plans to utilize tax increment financing to fund a portion of the transit investment since that would independently require the sponsor to undertake rigorous and expensive projections in order to underwrite the financing and convince potential investors of the soundness of the venture.

One comment suggested the consideration of both a qualitative and quantitative approach for forecasting changes in land use values and patterns. The summary for Question 7 deals with the qualitative and quantitative factors suggested.

Response: FTA believes that affordable housing should be a consideration in both the land use and economic development effects criteria. FTA is proposing to assess the existing publically supported housing in the project corridor under the land use criterion. FTA is aware of the concern that increases in land value that often accompany implementation of major capital transit investments can lead to increases in rents and gentrification and thereby reduce the stock of affordable housing. Hence, FTA intends to include an evaluation of whether the transit supportive plans and policies examined under the economic development criterion include features designed to ensure affordable housing remains in the proximity of the proposed project. The variety of factors suggested is very helpful. FTA is already working closely with HUD and EPA and intends to continue to work closely with these agencies.

FTA agrees changes in land values should not be used in the economic development effects criterion. While land values are likely to be affected by implementation of the proposed project because of changes in the accessibility afforded by the project, they are very difficult to predict. FTA agrees they are subject to various market forces and trends, and result from a wide range of factors such as the overall health of the region and corridor, other locational factors, and other public policies, not just implementation of the transit project.

FTA agrees forecasts of changes in land values are important if a project intends to use such tools as tax-increment financing, since a forecast of the change is required to determine how much revenue will be available. But the evaluation of the reasonableness of these revenue assumptions more properly belongs in local financial commitment criteria.

FTA believes it is appropriate to allow for an optional analytical approach to measure economic development effects in terms of population and employment around the transit investment, primarily because of the challenges in predicting and quantifying the measures discussed above. FTA believes projects sponsors that choose to do the optional analysis can assess the likely direction and general magnitude of economic development benefits sufficiently to evaluate project justification without a fully forecast measure.

Economic Development Question 10: ''Should economic development be a part of the cost effectiveness measure?''

Comments on this question are summarized under the section of this NPRM focused on cost effectiveness.

V. Section-by-Section Analysis

Reorganization

FTA is proposing to completely rewrite and reorganize part 611 by dividing it into three subparts. Subpart A would include general provisions, including purpose and contents, applicability, definitions, and a description of how the provisions of this regulation relate to the requirements of the transportation planning process. Subpart B would provide the process and project evaluation requirements applicable to New Starts projects. Subpart C would provide the process and project evaluation requirements applicable to Small Starts projects. The current Appendix describing the evaluation measures would remain. This distribution table shows the changes proposed to the organization structure of part 611 by section:

DISTRIBUTION TABLE

Current part 611	Proposed part 611
611.1 Purposes and contents	Subpart A—611.101 Purpose and contents.
611.3 Applicability	Subpart A—611.103 Applicability.
611.5 Definitions	Subpart A—611.105 Definitions.
611.7 Relation to planning and project development processes	Subpart A—611.107 Relation to the planning processes.
	Subpart B—611.209 Project development process (New Starts).
	Subpart C—611.309 Project development process (Small Starts).
	Subpart B—611.211 Before and after study (New Starts).
611.9 Project justification criteria for grants and loans for fixed guideway systems.	Subpart B—611.203 Project justification criteria (New Starts).
	Subpart C—611.303 Project justification criteria (Small Starts).
611.11 Local financial commitment criteria	Subpart B—611.205 Local financial commitment criteria (New Starts).
	Subpart C—611.305 Local financial commitment criteria (Small Starts).
611.13 Overall project ratings	Subpart B—611.207 Overall project ratings (New Starts).
	Subpart C—611.307 Overall project ratings (Small Starts).
Appendix A—Description of Measures Used for Project Evaluation	Appendix A—Description of Measures Used for Project Evaluation.

Although much of the regulation would remain the same, FTA is proposing a series of changes to better comport with the requirements of Section 5309, Title 49 U.S. Code (Section 5309) as amended by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and the SAFETEA–LU Technical Corrections Act.

First, and foremost, as noted above, FTA is proposing a new subpart to formally establish the process and

evaluation requirements for Small Starts. SAFETEA–LU established new, streamlined requirements for smaller projects that FTA has until now implemented through issuance of policy guidance. SAFETEA–LU also required that FTA initiate rulemaking to implement the Small Starts program, which FTA is now doing through this NPRM. Along those lines, this NPRM specifically proposes to add eligibility of corridor-based bus systems for Small Starts funding as provided by SAFETEA–LU. In addition, as provided for by SAFETEA–LU, this NPRM proposes elimination of the exemption from the evaluation and rating process for projects requesting less than $25 million in Section 5309 funding.

Second, FTA is proposing changes in the project justification criteria, especially for cost effectiveness, mobility benefits, environmental benefits, and economic development benefits. These changes respond to the comments received in response to the questions asked in the ANPRM issued on June 3, 2010.

Third, FTA is proposing to put in place a process whereby details related to evaluation measures and processes are included in policy guidance issued periodically for notice and comment, but not less than every two years as specified in SAFETEA–LU. This proposed guidance will supplement the current Appendix to the regulation and provide a formal process, linked to this regulation, whereby changes in the technical details of the New Starts and Small Starts project development and evaluation processes can be specified and changed over time as needed. FTA is making available a draft of its initial proposed guidance together with this NPRM and is requesting comment on it. In addition, this ''section-by-section'' analysis will contain some information on what the proposed policy guidance contains as it relates to that section of the regulation.

Fourth, FTA is proposing to change the point of comparison for incremental measures from the ''baseline'' alternative (typically a TSM, or Transportation Systems Management, alternative) to a no-build alternative to be defined in the policy guidance.

Fifth, FTA is proposing to establish a process whereby projects could pre-qualify based on their characteristics or the characteristics of the corridor in which they are located for automatic ratings of ''medium'' or better on one or more project justification or local financial commitment criteria. This is similar to the automatic ratings currently allowed under the ''Very Small Starts'' category that FTA has established through policy guidance. The NPRM proposes to add this process for both New Starts and Small Starts projects, but details and specific pre-qualification values (''warrants'') would be specified in future policy guidance that will be subject to a public comment period prior to finalization.

Sixth, FTA is proposing to re-rate projects only if there have been material changes in scope or estimated costs as they proceed through the project development process. A definition of what constitutes a material change would be established in future policy guidance that will be subject to a public comment period prior to finalization.

Finally, FTA is proposing a series of language changes to clarify various requirements and definitions and to alter the references to law to be consistent with changes made by SAFETEA–LU and the SAFETEA–LU Technical Corrections Act.

Subpart A—General Provisions

Section 611.101 Purpose and Contents

This proposed section, like Section 611.1 in the current regulation, describes the purpose and contents of this regulation, which is to guide the development and evaluation of projects that are candidates to receive discretionary major capital investment funding under Section 5309 of Title 49, U.S. Code. Those projects can include fixed guideway projects, either completely new systems or extensions to existing systems, (''New Starts'' or ''Small Starts'' depending on size and the amount of Section 5309 funding sought), and corridor-based bus systems (under ''Small Starts''), as specifically added by SAFETEA–LU.

The proposed section also specifically allows for separate procedures (described in a new subpart C) for ''Small Starts'' projects, which are projects that have a total cost of less than $250 million and are seeking less than $75 million in funding under Section 5309. As in the current regulation, this section indicates that New Starts projects will be evaluated and rated at several steps in project development, including advancement into preliminary engineering and final design and prior to entering into a full funding grant agreement. Ratings are shown in the report that must be submitted to Congress each year making funding recommendations. New language also indicates that this process will be used for Small Starts projects for advancement into project development and prior to entering into a project construction grant agreement. The language has also been changed to reflect that overall ratings will now be assigned on a five-level scale from ''high'' to ''low,'' instead of ''highly recommended,'' ''recommended,'' or ''not recommended,'' as required by amendments to Section 5309 made by SAFETEA–LU.

Section 611.103 Applicability

As in the current regulation, this proposed section specifies that part 611 would apply to all projects that are candidates for discretionary funding for major capital investment projects under Section 5309. Also as in the current regulation, it would apply to new fixed guideway projects and extensions to existing fixed guideway projects. But the section would also be amended to add the eligibility for corridor-based bus systems as Small Starts projects, as authorized by SAFETEA–LU.

As in the current regulation, FTA proposes that the evaluation process would not apply to projects that have already received a full funding grant agreement. The section would be modified to also indicate that it would not apply to Small Starts projects that have already received a project construction grant agreement, and would clarify that the previous regulation (now the current regulation) would continue to apply to those projects. In addition, FTA proposes to modify this section to eliminate the exemption from the project development and evaluation process in the current regulation for projects seeking less than $25 million in funding from Section 5309. In addition, FTA is proposing to remove the provision for expedited procedures for projects that are air-quality transportation control measures, since that provision was deleted from the law by SAFETEA–LU.

Section 611.105 Definitions

This section proposes definitions that apply to terms used throughout part 611. FTA proposes to keep most of the definitions in the current regulation and to add a number of additional definitions.

A new definition is proposed for a ''corridor-based bus system.'' This definition is the same as is currently in the law (49 U.S.C. 5309(e)(10)), and consistent with how FTA has defined it in policy guidance. FTA expects to continue to define the term more specifically through policy guidance so that it can be updated and revised as needed without the need for rulemaking. This definition essentially replaces the definition of ''bus rapid transit'' in the current regulation.

FTA proposes to delete the definition of ''baseline alternative'' and to add a

definition of ''no-build alternative'' as an alternative that includes the existing transportation system as well as those transportation investments committed in the Transportation Improvement Plan (TIP) pursuant to 23 CFR Part 450. In Appendix A and through its policy guidance, FTA is proposing to most often use the existing system as a point of comparison when calculating incremental measures (i.e., measures that need some other alternative as a point of comparison so that the change in that measure can be shown), but to use the no-build alternative for some measures when a project sponsor chooses to forecast benefits in a future year.

FTA is also proposing a number of changes to definitions that relate to the project development process. First, FTA proposes to modify the definition of ''alternatives analysis'' in the regulation to track with the definition in 49 U.S.C. 5309(a)(1). Second, FTA is proposing a definition for ''early systems work agreement'' by expanding on language which defines them in Section 5309. Third, FTA proposes to expand slightly the definition of ''final design'' to indicate that all funding commitments must be obtained during final design. Finally, FTA is proposing to add definitions of ''metropolitan transportation plan'' and ''locally preferred alternative'' that are consistent with the metropolitan planning regulations located in 23 CFR Part 450.

FTA is proposing to expand the definition of ''major capital investment project'' to include corridor-based bus systems since they are now eligible as Small Starts projects. The proposed revision to the definition of ''NEPA process'' would indicate that NEPA may be complete if a project is approved as a categorical exclusion, as well as if it has received a Record of Decision or a Finding of No Significant Impact. FTA is also proposing to amend the definition of ''New Starts'' to account for the funding thresholds added by SAFETEA–LU and accordingly add a definition of ''Small Starts.'' The proposed definition for Small Starts indicates that they are projects for new or extended fixed guideways or corridor-based bus systems with a capital cost of less than $250 million and seeking less than $75 million in funding from Section 5309. FTA is also proposing definitions for New Starts funds and Small Starts funds to improve the readability of the regulation.

The definition proposed for ''project development'' accounts for the addition of the Small Starts program by SAFETEA–LU, as that is the primary phase of development for Small Starts projects. The definition for TEA–21 is proposed for deletion given that it is no longer necessary.

Section 611.107 Relation to the Planning Process

As in the current regulation, this section proposes to require that projects seeking New Starts funds emerge from and be consistent with the metropolitan and statewide planning processes required by 23 CFR Part 450. It proposes to add Small Starts projects to this requirement, as provided for by SAFETEA–LU. It also proposes to require, as in the current regulation, that a project be based on the results of an alternatives analysis. As in the current regulation, the section provides details on what an alternatives analysis must include. The section proposes to remove the requirement for a specified baseline alternative (which often was required to be a ''Transportation System Management'' (TSM) alternative), because the point of comparison for the various incremental measures will hereafter be defined in Appendix A and the policy guidance as the existing system (for comparisons with current travel patterns) or the no-build alternative (for comparisons with travel patterns in the future.) The no-build alternative is defined as the existing transportation system as well as those transportation investments committed in the Transportation Improvement Plan (TIP) pursuant to 23 CFR Part 450..

The project development process included in the current regulation is proposed to be modified and moved to the separate subparts for New Starts and Small Starts, allowing them to be customized for each of the programs.

Subpart B—New Starts

Section 611.201 Eligibility

This is a new proposed section designed to clarify the basic requirements of what must be accomplished to be eligible for approval of grants at various stages of the project development process. The proposed requirements are similar to the requirements in the current regulation for approval into the various phases of project development.

Section 611.203 Project Justification Criteria

Many of the topics in this section of the proposed regulation are specified in Appendix A and, in far greater detail, described in the proposed policy guidance made available for public comment today. Thus, the section analysis for Section 611.203 will contain one portion that describes the proposed changes to the regulation and another portion that discusses what FTA is proposing in the Appendix and by way of guidance.

A. Proposed Regulation

Although Section 611.203 is a new section proposed for the regulation, much of the content is taken from the current regulation at 49 CFR 611.9. As in the current regulation, project justification will be evaluated based on a multiple measure approach that takes account of each of the criteria specified in Section 5309(d). The measures for the criteria are being proposed in Appendix A and described further in the policy guidance, which may be modified and re-issued periodically by FTA whenever significant changes are proposed, but not less frequently than every two years, as required by Section 5309(d)(6) of Title 49, U.S. Code. This would supplement Appendix A of the current regulation. FTA has found that the process of notice and comment for this policy guidance established by SAFETEA–LU to be an extremely effective way of continuing the improvement of the New Starts project evaluation process by providing flexibility to make changes to recommended technical methods as new methods become available.

As in the current regulation, individual project justification criteria would be assigned ratings on a five-level scale from ''high'' to ''low.'' The regulation would implement the changes made by SAFETEA–LU, which added economic development and public transportation supportive land use patterns and policies to the criteria required by law, and the proposed text would eliminate transportation system user benefits from cost effectiveness. In addition, FTA proposes to broaden the ''other factors,'' by simply noting that it includes any factors likely to be relevant to the success of the project. It would indicate that any incremental project justification measures would be evaluated against a point of comparison specified in Appendix A and the policy guidance. This proposed language would replace the current requirement that a baseline alternative, usually in the form of a ''Transportation System Management'' (TSM) alternative, be used as a point of comparison. As in the current regulation, it would be expected that as a project advances through the project development process, a greater degree of specificity would be in required with respect to project scope and costs, that commitments made to public transportation supportive land use policies would be expected to increase, and that a project sponsor's

technical capacity would be expected to improve.

FTA is proposing the regulation not include the ''considerations'' listed in 49 U.S.C. 5309(d)(3). All of these factors are covered by one or more of the project justification criteria themselves, or are relevant to the basic grant eligibility findings required under Section 611.201. FTA will continue to assure forecasting methods are reliable before accepting them as justifying a project. The direct and indirect costs of alternatives are assessed as part of the evaluation of cost effectiveness. Congestion relief is covered as part of the evaluation of mobility improvements and is likely to be related to the amount of transit use which forms a part of the measure of cost effectiveness. Improved mobility is explicitly measured by the mobility improvements criteria. Air pollution, noise pollution, energy consumption, and environmental mitigation are all part of the measure of environmental benefits. Reductions in local infrastructure costs and the costs of suburban sprawl are considered in the measure for economic development. Whether a project increases the mobility of public transportation dependent persons is covered by the measure of mobility improvements. Population density and current transit ridership are covered by the public transportation supportive land use criterion. Technical capability is covered by the requirement that a project meet the overall requirements for a grant under Section 5309. Differences in land, construction, and operating costs are considered by the cost effectiveness measure.

The section is proposed to include a provision that would allow for a process by which a project could pre-qualify to receive an automatic rating of ''medium'' or better on one or more of the project justification criteria based on its characteristics or the characteristics of the corridor in which it is being planned. FTA believes that it may be able to specify such characteristics, as it currently does for ''Very Small Starts'' under its policy guidance, for a range of larger projects and a wider range of corridor types. The pre-qualification values would be established by FTA by determining how projects would rate on the justification criteria based on an analysis at the national level. Proposed pre-qualification values would be published in policy guidance for comment by the public before their finalization. In this way, a project sponsor would not be required to conduct forecasts of various factors, since the project itself would be deemed to have sufficient merit to proceed for purposes of any such criterion.

Pursuant to the SAFETEA–LU Technical Corrections Act, the ratings on each of the project justification criteria would be combined using ''comparable, but not necessarily equal'' weights into a summary rating of project justification. FTA proposes that the process to do so, and the specific weights, would be described in the periodic policy guidance and would thus be subject to notice and comment if changes are proposed.

B. Appendix A and Proposed Guidance

As noted above, FTA is today making available draft policy guidance for public review and comment. That policy guidance provides greater detail on the proposed project justification measures specified in statute and proposed in regulation, as described above.

First, FTA is proposing in Appendix A to measure mobility benefits as the number of trips using the project, with extra weight given to trips that would be made on the project by transit dependent persons. Because this project trips measure derives exclusively from the performance of the project itself, it does not require a point of comparison (formerly the baseline alternative) for the computation.

FTA notes this change may have an impact on the kinds of projects that receive favorable ratings on the mobility and cost effectiveness criteria. Under the current approach, which uses ''transportation system user benefits'' (essentially travel time savings) as the measure of effectiveness, projects that involve longer trips are advantaged because there is more of an opportunity to save time. The revised measure is likely to rate projects with shorter trips better than they would have been rated under the former measure. On the other hand, projects with longer trips are more likely to reduce VMT, and thus are more likely to rate better on the measure of environmental benefits.

To facilitate the estimation of project trips, FTA will provide a simplified forecasting model that uses census data and ridership experience on existing fixed-guideway systems. The policy guidance proposes that sponsors of projects who can obtain a satisfactory overall rating based on estimates prepared with the simplified model will not be required to provide to FTA estimates of project trips prepared using traditional local travel forecasting models. At the project sponsors' option, estimates of project trips prepared with traditional methods may be used instead, but FTA will continue to require that those methods be tested for their understanding of local transit ridership patterns using recent data adequate to the support the tests.

FTA proposes to consider the project trips measure in the current year or in both the current year and the horizon year. The estimate of project trips for the current year puts all proposed projects in a consistent near-term timeframe for the evaluation. The estimate of project trips for the horizon year captures the increases in trips on the project that would be associated with growth and increasing congestion. Sponsors of projects that can obtain a satisfactory mobility, cost-effectiveness, and project justification rating (''medium'' or better) based on current-year estimates of project trips may choose to forego the preparation of horizon year estimates.

FTA proposes to assign the mobility rating based on the number of trips estimated to use the project, with extra weight given to trips made on the project by transit dependent persons. FTA is proposing in the accompanying policy guidance to give a weight of 2.0 to estimated trips made on the project by transit dependent persons. FTA proposes to assign rating breakpoints in future policy guidance based on an assessment of the values calculated for projects now in the project development process.

Second, FTA proposes in Appendix A to focus economic development on the likely future development outcomes resulting from the project (the land use criterion would focus on current land use patterns likely to support the proposed transit investment). Accordingly, FTA proposes to assess economic development benefits based on: (1) The existing or anticipated plans and policies to support economic development proximate to the project; (2) and (2) at the option of the project sponsor, indirect changes in VMT resulting from changes in development patterns may also be estimated, and the resulting environmental benefits calculated, monetized, and compared to the annualized capital and operating cost of the project under the economic development criterion. FTA would evaluate the existing or anticipated plans and policies in a manner that is similar to the existing practice with the addition of an examination of plans and policies in place to maintain or increase affordable housing in the corridor. Projects sponsors may chose whether or not to perform the optional quantitative analysis based on whether they believe it will help improve the economic development benefit rating for the project. Because of the absence of tools to predict development changes

associated with transit projects, quantification would involve an examination by the project sponsor of economic conditions in the project corridor, the mechanisms by which the project would improve those conditions, the availability of land in station areas for development and redevelopment, and a pro forma assessment of the feasibility of specific development scenarios. The environmental benefits stemming from such changes in land use would be estimated, monetized, and compared to the annualized capital and operating cost of the proposed project. FTA would review the analysis before assigning a rating.

Third, in Appendix A, FTA proposes to measure environmental benefits by considering the dollar value of changes in: (1) Air-pollutant emissions, estimated using changes in vehicle-miles of travel (VMT), with recognition of the air-quality attainment status of the metropolitan area; (2) greenhouse gas emissions estimated using VMT changes; (3) transportation energy use estimated using VMT changes; and (4) transportation fatalities, injuries, and property damage estimated using changes in VMT and transit-passenger miles of travel, compared to the annualized capital and operating cost of the proposed project. Changes in public health costs associated with long-term activity levels would be considered once better methods for calculating the information are developed. FTA would establish in policy guidance breakpoints for the environmental benefits rating.

Fourth, FTA proposes in Appendix A to measure operating efficiencies as the change in operations and maintenance cost per ''place-mile'' compared to the existing transit system in the current year or to the no-build transit system (as defined in this proposed regulation) in the horizon year. A ''place-mile'' would be defined as the seated plus standing capacity of vehicles multiplied by the annual revenue-miles of those vehicles. FTA would define the rating breakpoints in policy guidance. This would replace the current approach in which changes in cost per passenger mile is the measure used. Changes in cost per ''place-mile'' better focuses only on changes in the cost to supply transit service. The former measure mixed in issues related to deployment and usage patterns, which are better addressed in the mobility and cost effectiveness measures.

Fifth, FTA proposes in Appendix A to measure cost effectiveness as the incremental cost per trip on the project. The policy guidance proposes to define incremental costs as the sum of: (1) The additional annualized capital cost of the project as compared to the existing system, and (2) the change in annual operating and maintenance costs. (The annual trips on the project would include the additional weight applied to project trips by transit dependents. The annualized capital cost of the project used to compute the cost effectiveness measure would exclude the costs of certain ''betterment'' elements of project scope that foster economic development and environmental benefits (e.g., the incremental cost of obtaining LEED-certifications, station-access provisions beyond those required by the ADA, and station-design and station-access elements that would enhance development impacts).

Finally, FTA proposes in Appendix A to measure existing land use generally as it does today based on existing population and employment density in the corridor with the addition of the amount of publically supported housing in the corridor today.

The project justification rating would continue to be a weighted combination of the six criteria: (1) Mobility, (2) economic development effect, (3) environmental benefits, (4) operating efficiency, (5) cost effectiveness, and (6) land use. The accompanying policy guidance proposes that equal weights would be applied to each measure, although ''other factors'' could also be taken into account.

Section 611.205 Local Financial Commitment Criteria

Some of the topics in this section of proposed regulation are specified in Appendix A and, in far greater detail, described in the proposed policy guidance made available for public comment today. Thus, the section analysis for Section 611.203 will contain one portion that describes the proposed changes to the regulation and another portion that discusses what FTA is proposing in Appendix A and by way of guidance.

A. Proposed Regulation

As under the current regulation, a project must be supported by an acceptable degree of local financial commitment. FTA is proposing to continue to rate the proposed share of funding for the project provided by non-New Starts or non-Small Starts funds. In accordance with language in SAFETEA–LU, however, a project's overall local financial commitment rating cannot be downgraded based on this criterion (i.e., ''overmatch'' can only help the summary local financial commitment rating). FTA proposes to reorganize the rating of the other local financial commitment criteria to better reflect the strong interaction between capital and operating funding needs. FTA has found that the current process, which produces ratings on the capital and operating plans separately, is duplicative in many ways. FTA proposes instead that the remaining two measures for local financial commitment be: (1) The current capital and operating financial condition of the agency that would operate the project; and (2) the reliability of the capital and operating cost and revenue estimates and the resulting financial capacity of the project sponsor.

As with the project justification criteria, FTA is proposing the possible use of standards for the local financial commitment criteria that would allow a project to receive an automatic rating or ''medium'' or better based on the characteristics of the project and the project sponsor. These thresholds would be established in the periodic policy guidance. As in the current regulation, each of the local financial commitment criteria would be rated on a five-level scale from ''low'' to ''high'' and a summary local financial commitment rating would be established combining the individual ratings. The process and weights used to develop the summary rating would be established in the periodic policy guidance, just as they are now. The current regulation calls for combining the ratings but does not provide details on how it must be done.

B. Appendix A and Proposed Guidance

As noted above, FTA is today making available draft policy guidance for public review and comment. That policy guidance provides greater detail on the proposed local financial commitment measures specified in statute and proposed in regulation, as described above.

FTA is proposing to restructure the examination of local financial commitment to better reflect the interdependency of capital and operating financial plans submitted by project sponsors. Currently, FTA examines a project sponsor's financial plan and evaluates and rates: (1) The non-New Starts or non-Small Starts share of the project; (2) the strength of the capital financial plan (based on the current capital condition, the commitment of capital funds, and the reasonableness of the estimates used in the financial plan and the resulting financial capacity of the project sponsor); and (3) the strength of the operating financial plan (based on the current operating condition, the commitment of operating funds, and the reasonableness of the estimates used in the financial plan and the resulting

financial capacity of the project sponsor). FTA is proposing to instead examine the project sponsor's financial plan and evaluate and rate it based on: (1) The non-New Starts or non-Small Starts share of the project; (2) the current financial condition of the project sponsor (both capital and operating); (3) the commitment of capital and operating funds for the project; and (4) the reasonableness of the estimates used in the financial plan and the resulting capital and operating financial capacity of the project sponsor. The individual measures are described in Appendix A with more detail and breakpoints provided in the policy guidance.

Section 611.207 Overall New Starts Project Ratings

As in the current regulation, FTA proposes that the ratings for project justification and local financial commitment be combined into an overall rating of project merit. The proposed regulation would assign an overall rating on a five-level scale from ''low'' to ''high'' in conformance with the requirements of SAFETEA–LU, which replaced ratings of ''highly recommended,'' ''recommended,'' and ''not recommended.'' As in the current regulation, these overall ratings will be assigned when a project is a candidate for approval into preliminary engineering, approval into final design, and approval for a full funding grant agreement. In contrast to the current regulation, however, FTA will not require re-rating of the project for each Annual Report to Congress so long as the scope and cost of the project have not changed materially from the previous rating. The policy guidance will provide a definition of material changes that will trigger a re-rating. If there are no materials changes, the rating developed at the earlier step will continue in force. As in the current regulation, the overall ratings will be used for approval of entry into preliminary engineering, approval of entry final design, for approval of a full funding grant agreement, and in the Annual Report to Congress. The proposal provides that the overall rating will be established by averaging the summary ratings obtained on project justification and local financial commitment and that the rating will be rounded up when there is a one-level rating difference for the two summary ratings. As in the current regulation, the proposed regulation requires that in order to receive an overall rating of ''medium,'' both the summary project justification rating and the summary local financial commitment rating must be at least ''medium.'' Also, if a project is rated ''low'' on either the summary project justification rating or the local financial commitment rating, the overall rating will be ''low.''

Section 611.209 Project Development Process

This section includes requirements for the project development process now included in paragraphs (b) through (d) of Section 611.7. It includes the requirements for advancement into preliminary engineering, final design, and for a full funding grant agreement. For clarity, provisions related to the ''before and after study'' have been moved to Section 611.211.

As in the current regulation, FTA proposes that a project can be considered for entry into preliminary engineering only if an alternatives analysis has been completed, the locally preferred alternative has been adopted into the metropolitan transportation plan by the metropolitan planning organization, all other FTA program requirements are met, and the overall New Starts rating for the project is at least ''medium.'' Projects already approved for entry into preliminary engineering when this regulation goes into effect would continue in preliminary engineering under the proposed regulation.

As in the current regulation, the proposed rule would provide automatic pre-award authority for a project sponsor to conduct preliminary engineering, allowing for reimbursement of such costs prior to award of any FTA grant for the purpose. As in the current regulation, such authority would not be a commitment of future Federal funding, and all Federal requirements would have to be met to assure that such costs are eligible should a grant be made. In addition, FTA is also proposing to codify its recent policy change to allow, upon completion of the NEPA process, pre-award authority for utility relocation, real property acquisition, and vehicle acquisition. Real estate acquisition could be reimbursed when a project is approved into final design, and vehicle purchases could be reimbursed when a project is approved for construction.

As in the current regulation, the proposed regulation would allow a project to be approved into final design upon completion of the NEPA process. In addition, a project sponsor would have to demonstrate adequate technical capacity to carry out the project and meet all other grant requirements. The proposed regulation would also continue to require that the project receive an overall New Starts rating of ''medium'' or better. Projects already in final design when this regulation becomes final would continue in that status under the proposed regulation. FTA is proposing codify its recent policy change which extended automatic pre-award authority with approval into final design for final design activities, as well as demolition and non-construction activities (such as procurement of long-lead time items, such as rails, ties, and other specialized commodities and equipment). The regulation specifies that those costs are potentially reimbursed upon grant approval.

As in the current regulation, the proposed regulation provides that a full funding grant agreement would be executed once no outstanding issues remain that would interfere with the successful implementation of the proposed project and once the sponsor has demonstrated sufficient technical capabilities to carry out the project. To be eligible for an FFGA, the project would have to be authorized by law, have an overall New Starts project rating of ''medium'' or better, have completed all applicable project development requirements, and be ready to utilize New Starts funds. The proposed regulation specifies that the issuance of an FFGA is at FTA's discretion, as in the current regulation. The proposed regulation clarifies that an FFGA will include a baseline cost estimate and baseline schedule. As in the current regulation, the proposed regulation provides that the FFGA will provide for a fixed maximum level of New Starts funding, a schedule for anticipated Federal funding, a requirement that the project sponsor complete the project to the initiation of revenue service, and that the project sponsor absorb any cost overruns using funding from sources other than the New Starts program. The proposed regulation requires that, as noted in the current regulation, annual New Starts funding in an FFGA is subject to the availability of appropriated budget authority and the ability of the project sponsor to use the funding effectively.

As in the current regulation, the proposed regulation provides that the total amount of funding that can be committed by FTA to FFGAs, as well as to ESWAs and Letters of Intent is limited by law to the amount of funding authorized for New Starts. As provided by statute, and the current regulation, the proposed regulation provides that FTA may also make limited ''contingent commitments'' beyond the authorized amount.

Section 611.211 Before and After Study

This section provides the requirements for the ''before and after study'' required by law. In the current regulation, these requirements appear in Section 611.7(c)(4) and (5) and in Section 661.7(d)(7). This proposed section consolidates these requirements in one place and makes certain other changes to improve clarity. As in the current regulation, the purpose of the study in the proposed regulatory language is to assess the impacts of the New Starts project and to compare the costs and impacts of the project with costs and impacts forecast during the project development process. Also in the current regulation, the proposed regulation requires that a project sponsor produce a plan for the before and after study during preliminary engineering. New proposed language specifies in more detail the kind of information to be collected in the study, including information on the characteristics of the project and other related changes in the transit system (such as service levels and fares), the capital and operating costs of the project, and the impacts of the project on transit service quality, ridership, and fare levels.

As is generally required by the current regulation, the plan under this proposal developed during preliminary engineering would provide for preservation of data on the predicted scope, costs, and ridership; collection of ''before'' data on the transit system and ridership patterns and travel behavior; documentation of capital costs as the project is built; collection of ''after'' data two years after the project opens on actual project scope, costs, and ridership; an analysis of the project costs and impacts; and an assessment of the consistency of the forecasts of costs and ridership between those forecast and those actually achieved. FTA is requesting comments on whether two years after opening is a sufficient time for project impacts to be fully realized. The proposed regulation also calls for the plan to include preparation of a final report to be submitted within three years of project opening. As in the current regulation, the costs of carrying out the before and after study, including the necessary data collection, is proposed to be an eligible expense of the proposed project. Also as in the current regulation, the proposed regulation requires that the plan be approved before the project may advance into final design.

A new requirement in the proposed regulation provides that, before execution of the full funding grant agreement, there must have been satisfactory progress on carrying out the plan. As in the current regulation, the full funding grant agreement would include a requirement that the plan be carried out during the construction of the project and that FTA may condition receipt of funding during an FFGA on satisfactory execution of the before and after study.

Subpart C—Small Starts

Subpart C is a completely new subpart laying out the requirements for Small Starts projects. These are projects for new fixed guideways or extensions to existing fixed guideways, or new or extended corridor-based bus projects meeting the definitions in law and guidance ensuring that they represent a ''substantial investment'' provided for in law. Small Starts projects must have a capital cost of less than $250 million and be seeking less than $75 million in Small Starts funds.

Because the regulatory framework for Small Starts projects in subpart C is quite similar to that of the framework in subpart B for New Starts, this portion of the section-by-section analysis will only highlight differences between Subpart B and Subpart C.

Section 611.301 Eligibility

This proposed section is designed to clarify the basic requirements of what must be accomplished for a project to be eligible for approval at each step of the process to prepare for and achieve execution of a project construction grant agreement (PCGA). This proposed section is nearly identical to the proposed Section 611.201 for New Starts in subpart B, except that this section expands eligibility to corridor-based bus systems, requires that a project be a Small Starts project rather than a New Starts project, references the Small Starts evaluation criteria rather than the New Starts evaluation criteria, references a PCGA rather than an FFGA, and provides details on project development grants (rather than on preliminary engineering or final design grants).

Section 611.303 Project Justification Criteria

As in the proposed regulation for New Starts in Section 611.203, this section proposes that the evaluation of project justification for Small Starts be based on a multiple measure approach that takes into account each of the criteria specified in Section 5309(e). This proposed section differs in that Small Starts projects are proposed to be rated on just three criteria: economic development, public transportation supportive land use patterns and policies, and cost effectiveness (at the time of initiation of revenue service), in accordance with the language of SAFETEA–LU. In addition, Small Starts projects are more likely to be able to take advantage of standards that could lead to automatic ratings in paragraph (e) of this proposed section given that such automatic ratings would more likely be applicable to smaller projects. That said, the proposed regulatory language on that point is the same.

As in the proposed parallel Section 611.203 for New Starts, details concerning project justification criteria, the point of comparison for certain incremental measures, and the weights given to the criteria in Section 611.303 for Small Starts can be found in proposed Appendix A and in the proposed policy guidance made available today for public review and comment. Thus, it is not necessary to repeat the details on Appendix A and the proposed policy guidance located above in Section 611.203, as the same details apply to Small Starts projects, only to slightly different evaluation criteria.

Section 611.305 Local Financial Commitment Criteria

This proposed section is nearly identical to the parallel section for New Starts projects in proposed Section 611.205. There are two primary differences: (1) References are made to Small Starts and to the statutory language for Small Starts rather than for New Starts; (2) the local financial commitment is evaluated based on the year the project is put into operation rather than based on a twenty-year planning horizon, as provided for in SAFETEA–LU.

As with the parallel section for New Starts, FTA is proposing details concerning its proposals for evaluating local financial commitment in policy guidance made available today. Other than for the change in year for evaluation of local financial commitment, this process is proposed to be similar to that of New Starts, so there is no need for a fuller explanation of the proposed guidance here.

Section 611.307 Overall Small Starts Project Ratings

The only differences between proposed Section 611.307 and the parallel provision for New Starts in the proposed Section 611.207 are: (1) References are made to Small Starts and to the statutory language for Small Starts rather than for New Starts; and (2) references in the proposed section for

New Starts to preliminary engineering and final design are replaced in this proposed section with references to project development; and (3) references to FFGAs and ESWAs are replaced with references in this section to PCGAs.

Section 611.309 Project Development Process

This section is substantially similar to the parallel proposed Section 611.209 for New Starts, with the following differences: (1) References are made to Small Starts and to the statutory language for Small Starts rather than for New Starts; (2) references in the proposed section for New Starts to preliminary engineering and final design are replaced in this proposed section with references to project development (which includes the combination of the paragraphs on preliminary engineering and final design into a paragraph on project development); and (3) references to FFGAs and ESWAs are replaced with references in this section to PCGAs.

VI. Regulatory Analysis and Notices

A. Executive Orders 13563 and 12866

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. FTA has determined that this is an ''economically significant'' rule under Executive Order 12866, as it would affect transfer payments totaling more than $100 million annually. However, FTA does not know precisely how much transfer payments would be affected by this rule. Due to changes in the evaluation criteria, the projects selected for funding by the FTA may change. For example, by proposing to add quantified measures for environmental benefits, projects which have relatively large amounts of such benefits may be advantaged. On the other hand, the proposed change to the cost effectiveness measure from cost per hour of travel time savings to cost per trip could advantage projects serving shorter trips and more densely developed areas. For the purposes of this initial regulatory impact analysis, FTA preliminarily estimates that the proposals in the rule could affect the allocation of about $250 million of annual New Starts and Small Starts grant funds. FTA requests public comments on this estimate, as well as specific methods for more precisely estimating the impact of the rule.

B. Need for Regulation

The rule proposes to implement changes mandated by SAFETEA–LU and the SAFETEA–LU Technical Corrections Act to the major capital investment program evaluation and review process that has been defined in statute for 35 years. The proposed rule and accompanying proposed policy guidance, would change FTA's implementation of the major capital investment program, primarily by adding the Small Starts project category to the program as required by SAFETEA–LU, giving the project justification criteria specified in law ''comparable but not necessarily equal weights'' as required by the SAFETEA–LU Technical Corrections Act, improving the measures FTA uses for each of the evaluation criteria specified in law, and streamlining and simplifying the means by which project sponsors develop the data needed by FTA.

The rule may have the effect of altering the pattern or timing of major transit capital expenditures and changing the allocation of funds by transit agency size. For example, SAFETEA–LU makes corridor based bus projects eligible for Small Starts funding when previously only fixed guideway projects were eligible for major capital investment program funding. Fixed guideway projects tend to be costlier than corridor based bus projects. This eligibility change allows smaller transit agencies with smaller scale projects to obtain funding from the program.

The NRPM, combined with the proposed policy guidance being published concurrently for comment, would improve the evaluation of project outcomes in mobility improvements, operating efficiency, cost effectiveness, environmental benefits, land use economic development, and local financial commitment.

The NPRM proposes revisions to the project justification and local financial commitment criteria for FTA's evaluation of New Starts and Small Starts projects under Section 5309(d) and (e) of Title 49, U.S. Code. In the NPRM and accompanying proposed guidance, FTA also proposes to simplify the various means through which project sponsors may obtain the information they need to provide to FTA for its evaluation of projects. For example, FTA is proposing to allow project sponsors to use a simplified FTA-developed national model to estimate ridership rather than standard local travel forecasting models, to use a series of standard factors in a simple spreadsheet to calculate vehicle miles traveled (VMT) and environmental benefits, to no longer require the development of a baseline alternative for calculation of cost-effectiveness, and to expand the use of warrant whereby a project may be able to automatically qualify for a rating if it meets parameters established by FTA.

The purpose of this regulatory assessment is to examine the likely effects of this proposed rule and proposed policy guidance on project sponsors, including potential small entities such as local units of government populated by less than 50,000 people.

These proposed changes may alter the pattern or timing of major capital investment expenditures, with a possible change in costs and/or benefits to individual transit agencies and their stakeholders. However, each change proposed in the regulation will be examined as to its likely effect, and a determination will be made as to whether the effect can be quantified with available information or with information that may be provided by commenters to the rule. Several questions will be raised in this analysis where additional data may help FTA to quantify some benefit or cost of the regulation. In the absence of this data, FTA will discuss the costs and or benefits in a qualitative manner in the next rulemaking action for this program.

B. Regulatory Evaluation

1. Overview

The NPRM and proposed policy guidance address public comments that FTA received in response it its Advance Notice of Proposed Rulemaking (ANPRM) published June 3, 2010. These comments pertain to how FTA would manage project sponsors' calculation of cost effectiveness, environmental benefits, and economic development effects. The NPRM and accompanying policy guidance propose changes to streamline the project evaluation process for major capital projects. The regulatory text and appendix to the regulation outline FTA's proposed approach, with technical details proposed in policy guidance.

Based in part on public comments on the ANPRM, the NPRM clarifies the discussion of project performance. This includes the project's effectiveness in generating benefits in the areas required by law and of interest to FTA, cost

effectiveness in obtaining these benefits, and equity in the distribution of benefits to groups of concern to the Federal government. Sponsors are given the latitude to forego the analysis of benefits that are not relevant to individual projects, which will simplify the project evaluation process, eliminating unnecessary analytical effort on the part of project sponsors. The NPRM and proposed policy guidance achieve this by allowing for the use of default methods and assumptions whenever possible. The NPRM and proposed policy guidance defer to project sponsors' decisions to pursue estimation of additional benefits and better ratings through more elaborate analysis.

2. Covered Entities

Eligible applicants under the major capital investment program are public bodies and agencies (transit authorities and other state and local public bodies and agencies thereof) including states, municipalities, other political subdivisions of states; public agencies and instrumentalities of one or more states; and certain public corporations, boards, and commissions established under state law. Private corporations and private non-profit entities are not eligible and would not be affected by the proposed regulation.

The majority of applicants to the major capital investment program are transit agencies and other state and local public bodies such as metropolitan planning organizations or units of City or state governments located in areas with greater than 50,000 in population. These would be the entities most affected by the proposed regulation. Over the past four years, FTA has received approximately 60 applications for entry into one of the various phases of project development, roughly 40 of which were New Starts projects and 20 of which were Small Starts projects. New Starts projects have tended to be proposed primarily in medium to large sized urbanized areas with greater than 500,000 in population. Small Starts projects have been proposed in all different sized cities, including some of the largest urbanized areas in the country, as well as in areas with less than 500,000 in population.

The proposal would affect few local governments with populations of less than 50,000 people, as jurisdictions proposing New and Small Starts projects are usually much larger in size with more extensive transit service already in place Transit capital and operating funding for areas with populations less than 50,000 people is provided by FTA under a separate formula funding program to the states, which decide how to allocate the funds to the local areas within the state. However, smaller jurisdictions are not prohibited from applying for major capital investment program funding. To date, FTA has funded only one project in an area under 50,000 in population through the major capital investment program.

3. Cost Effectiveness

FTA's existing regulation for the major capital investment program (49 CFR Part 611) defines cost effectiveness as the incremental annualized capital and operating cost per incremental hour of transportation system user benefits (essentially travel time savings). The cost and travel time savings of the proposed project are compared to a baseline alternative (usually a lower cost bus project serving similar travel pattern in the corridor).

The breakpoints that FTA uses to assign cost effectiveness ratings currently are based on the value of time with a 20 percent upward adjustment to account for congestion benefits and a 100 percent adjustment to account for non-mobility benefits. U.S. Department of Transportation (USDOT) guidance (*Departmental Guidance for the Valuation of Travel Time in Economic Analysis, April 9, 1997*) describes, in detail, the derivation of the standard values of time to be used by all U.S. DOT Administrations in the economic evaluation of proposed projects. Consistent with this departmental guidance, FTA values travel time-savings at 50 percent of Median Household Income published by the Census Bureau, divided by 2,000 hours. However, FTA acknowledges that the time savings for transit users alone does not capture the full range of benefits of major transit projects. Pending improved reliability of the estimates of highway congestion relief, FTA assumes that congestion relief adds about 20 percent to the travel time savings generated by the project. Further, indirect benefits (economic development, safety improvements, pollutant reductions, energy savings, etc.) increase that value. Assuming that indirect benefits are approximately equal to the direct transportation benefits, FTA increases the value of each hour of transit travel time by a factor of two. FTA inflates the breakpoints annually based on the Gross Domestic Product Index (also known as the GDP deflator).

This NPRM proposes a simplified cost effectiveness measure: annualized capital and operating cost per trip. Because it is not an incremental measure, it requires no baseline alternative or point of comparison.. In addition, project elements that respond to specific Federal policies would not count as project costs. Instead, they would be considered ''betterments'' and would be excluded from the cost-effectiveness calculation. Betterments could include items that are above and beyond the items needed to deliver the mobility benefits and which would not contribute to other benefits such as operating efficiencies. For example, betterments could include features needed to obtain LEED certification for a transit facilities or additional features to provide extra pedestrian access to surrounding development or aesthetically-oriented design features. Finally, to further streamline the evaluation and rating process, FTA may use ''warrants'' to pre-qualify projects as cost-effective based on their characteristics and/or the characteristics of the corridor in which they are located. For example, if there is an certain level of transit ridership in the corridor today, and the proposed project falls within total cost and cost per mile parameters defined by FTA, then it would be ''warranted'' by FTA as cost-effective, it would receive an automatic medium rating on the cost-effectiveness criterion, and the project sponsor would not need to undertake or submit the results of certain analyses.

The net effect of these proposed changes is to reduce the reporting and analytical burden on project sponsors. For example, the analytical design of a hypothetical alternative project is a costly effort that is eliminated in this NPRM. Any increased burden would result from project sponsors electing to perform optional additional analysis in support of their projects entirely at their option.

The simplified cost-effectiveness measure proposed may result in different kinds of projects receiving more favorable ratings than under the current approach, which could lead to transfer payments totaling more than $100 million annually. Some examples are described below:

(a) Under the current approach, which uses ''transportation system user benefits'' (essentially travel time savings) as the measure of effectiveness, projects that involve longer trips are advantaged because there is more of an opportunity to save time. The revised measure values all trips equally, whether short or long. Thus, projects with shorter trips are likely to fare better than they do under the current measure.

(b) Under the current approach which requires comparing the project to a baseline alternative to calculate cost-effectiveness, many project sponsors

have had difficulty demonstrating sufficient travel time savings as compared to project cost. As a result, in an effort to reduce costs, project sponsors have eliminated stations, shortened platforms, eliminated landscaping and other elements desirable to the local community, reduced parking, purchased only the number of vehicles needed to meet near term demand rather than longer term demand, etc. In some cases, this has resulted in disproportionate impacts to minority and low-income populations and led to litigation which delayed the project and caused further cost increases. To add deferred project scope at a later date is far more costly then if it had been constructed as part of the original project. FTA believes the proposed measure will help reduce these instances of nearsighted scope changes, given its emphasis on trips rather than travel time savings and its elimination of the baseline alternative point of comparison.

4. Economic Development

Currently, FTA evaluates economic development based on the local plans and policies in place to enhance transit oriented development in proximity to the proposed transit stations. In other words, FTA examines the likelihood the project will foster economic development based on the transit supportive plans and policies in place, including whether increased densities are encouraged in station areas, whether there is a plan for pedestrian and non-motorized travel, whether zoning and parking requirements are in place, etc.

This NPRM would proposed to continue to evaluate economic development based on the transit supportive land use plans and policies in place, but would add an examination of affordable housing policies and plans to ensure they allow for a maintenance of or increase to affordable housing in the corridor after implementation of the project. FTA is also proposing to require that project sponsors report under economic development the number of domestic jobs related to project design, construction, and operation, although this figure would not be used for evaluation purposes. Lastly, project sponsors have the option of using a scenario approach to characterize and estimate the quantitative impacts of economic development resulting from implementation of the project, including the environmental benefits that would result from such economic development due to agglomeration effects.

The added cost of the proposed additions to the economic development criterion would be marginal because most sponsors already develop this information as part of the local planning process. Many project sponsors are pursuing major capital investment projects to facilitate efforts to induce economic development, thus, information pertaining to economic development scenarios and job creation are typically developed during the planning process.

5. Environmental Benefits

Currently, the environmental benefits of transit New Start projects are evaluated on the basis of the EPA air quality designation for the metropolitan area.

This NPRM proposed to instead examine the direct and indirect benefits to the natural and human environment, including air quality improvement from changes in vehicular emissions, reduced energy consumption, reduced green house gas emissions, reduced accidents and fatalities, and improved public health (once a measure is developed). The direct benefits are calculated using standard factors from changes in vehicle miles traveled and assigned a dollar value. The dollar value of the benefits is then compared to project cost. Project sponsors customarily calculate environmental benefits for transit projects to meet local political needs and for the purpose of the review required by the National Environmental Policy Act. FTA is proposing a simplified approach for developing the information needed for New Starts evaluation and rating that would be based on simple spreadsheet calculations using a series of standard factors. Therefore, the proposed calculations for the New Starts process would not measurably change the analytical and reporting burdens.

6. Mobility Improvements

Currently, five measures are applied to estimate mobility improvements: (1) The number of transit trips using the project; (2) their transportation system user benefits per passenger mile on the project; (3) the number of trips by transit dependent riders using the project; (4) their transportation system user benefits per passenger mile on the project; and (5) the share of transportation system user benefits received by transit dependents compared to the share of transit dependents in the region. Transportation system user benefits reflect the improvements in regional mobility (as measured by the weighted in- and out-of-vehicle changes in travel-time to users of the regional transit system) caused by the implementation of the proposed project. The measures are calculated by comparing the proposed project to a baseline alternative, which is usually the ''Transportation System Management'' (TSM) alternative.

In the NPRM, FTA is proposing to use total trips on the project as the measure of mobility, with extra weight given to trips made by transit dependents. Because it is not an incremental measure, no comparison to a baseline alternative is required.

Under the current approach, which uses ''transportation system user benefits'' (essentially travel time savings), projects that involve longer trips are advantaged because there is more of an opportunity to save time. The revised measure values all trips equally, whether short or long. Thus, projects with shorter trips are likely to fare better than they do under the current mobility improvements measure. However, because transit dependent trips are given higher weight in the proposed approach than they are given in the current approach not all projects with shorter trips may fare better.

The reporting burden for the mobility improvements measure will be significantly lowered under the proposed approach as compared to the current approach because FTA is proposing a simplified FTA-developed national model that would calculate trips rather than project sponsors spending significant time and effort adjusting their local travel forecasting model to estimate trips on the project. Local models are typically developed by the metropolitan planning organization to forecast regional trips and are not often honed to adequately perform corridor-level analyses. In addition, because development of the baseline alternative is no longer required under the proposed measure, significant time developing that alternative is no longer required if it is not an alternative local decisions-makers wish to pursue. For local decision-making purposes, the number of trips made on the project is typically calculated so the data required by FTA is not considered onerous.

7. Operating Efficiencies

The current measure for operating efficiencies is the incremental difference in system-wide operating cost per passenger mile between the proposed project and the baseline alternative. In the NPRM, FTA is proposing instead that the measure of operating-efficiency be the change in operating and maintenance cost per ''place-mile'' compared to either the existing transit system in the current year or, at the discretion of the project sponsor, both the existing transit system in the current

year and the no-build transit system in the horizon year.

Changes in cost per ''place-mile'' better focuses only on changes in the cost to supply transit service. The current measure mixes in issues related to deployment and usage patterns, which FTA believes are better addressed in the mobility and cost effectiveness measures.

Operating and maintenance costs are developed by project sponsors in the normal course of project planning, thus FTA's need for this data does not impose any additional burden. The ''place-mile'' data, however, is new and not typically developed by project sponsors. Thus, some reporting burden will be added but it is expected to be minimal given that the data used to develop ''place-miles'' is generally readily available from commonly gathered performance statistics kept by transit agencies such as vehicle-miles and mix of vehicle types in the fleet.

8. Regulatory Evaluation

FTA considered the industry-wide costs and benefits of this NPRM. Each is discussed below.

Costs

Regulatory Familiarization—While FTA believes the rule will have overall net benefits, project sponsors and their contractors will need to expend resources to read and understand the final rule and policy guidance, and may need to make changes to their existing systems, programs, and procedures in response to the changes made by the rule. FTA estimates it will take project sponsors and their contractors 40 hours on average to perform these tasks. Assuming 100 project sponsors and 100 contractors, and an average hourly wage (including benefits) of $39.04 for project sponsors and $37.51 for contractors, FTA estimates a cost of $306,200 for regulatory familiarization. The hourly wage rates assumed came from the Bureau of Labor Statistics' 2010 National Compensation Survey and represent the median rates for civil engineers in local government and in private industry, respectively. Civil engineers were chosen as the reference point for simplification purposes and also because that hourly rate was higher than the rate for urban planners, but they are just two of the many professions involved in planning and project development of New and Small Starts projects. FTA expects project sponsors and their contractors to incur these regulation familiarization costs one time only. FTA requests comments on these assumptions and estimates.

The NPRM would require project sponsors to submit information on project characteristics that they have not previously been required to submit to FTA. This includes the number of jobs resulting from implementation of the project, the ''place-miles'' of service used in the operating efficiencies measure, the change in environmental benefits resulting from the expected change in vehicle miles travelled, the amount of affordable housing existing in the corridor, and the plans and policies to maintain or increase affordable housing in the future. In general, FTA believes this information can be gathered and estimated rather quickly and easily, and will not require significant additional cost, time, or effort. The number of jobs created is something project sponsors typically estimate for local decision-makers. The data needed to calculate ''place-miles'' is typically gathered by reporting to FTA's National Transit Database. FTA expects the existing affordable housing will come directly from readily available data published on the U.S. Department of Housing and Urban Development Web site. FTA will develop spreadsheets with a number of standard factors to estimate environmental benefits. Project sponsors will be asked only to input a few key variables. Therefore, FTA estimates the time to prepare the additional information proposed in the NPRM to be at most 40 hours.

The optional scenario analysis allowed under the economic development criterion may require some time and effort to prepare. However, project sponsors may choose to forgo this analysis.

Benefits

The need for additional information described above would be counterbalanced by the simplification of methods that will be used to generate the information, as provided in the proposed appendix to the regulation and the proposed guidance made available concurrently to the public for comment. For example:

(a) Project sponsors would no longer be required to use local travel forecasts to obtain the information needed for FTA's evaluation of the various project justification criteria. Instead, project sponsors may use an FTA-developed simplified national model. Project sponsors may continue to use information generated by local travel forecasts if they believe it will result in a more favorable rating for the proposed project, but it is at the project sponsors' discretion (i.e., not required by regulation or suggested in guidance). FTA expects this change would save significant time and project sponsor resources. It often costs project sponsors several hundreds of thousands of dollars up to millions of dollars in consultant help and six months or longer to adjust local travel forecasting models to obtain acceptable ridership results for FTA's evaluation and rating purposes.

(b) Project sponsors would no longer be required to develop a baseline alternative. The process of defining a baseline alternative is an iterative one. By eliminating the need to develop a baseline alternative (which may not be an alternative local decision-makers wish to implement), FTA estimates up to six months of time could be saved. The cost of this time savings is difficult to estimate, and FTA has not seen any particular data on the estimation, but project sponsors have suggested that each month of delay in implementing a project is roughly $1 million in additional cost.

(c) The expanded use of warrants (a process by which a project can qualify for an automatic rating if it can meet certain FTA defined parameters) would eliminate the need for project sponsors to undertake certain analyses and submit that data to FTA. This can save significant time and money since project sponsors often hire consultants to help undertake the analyses required to develop the data for FTA.

FTA believes the improved measures for cost effectiveness, environmental benefits, and economic development will reduce the influence of a ''one size fits all'' evaluation approach that, historically, has favored some transit benefits over others and thereby has minimized locally preferred benefits. For example, by focusing on travel time savings, the current process tends to favor projects in areas with extreme congestion over areas that do not currently have extreme congestion but are planning future transit to keep from becoming mired in extreme congestion. Similarly, the focus on travel time savings does not acknowledge that some areas undertake transit projects to encourage development rather than to address mobility challenges. The proposed NPRM, and its focus on trips rather than travel time savings as the measure of mobility acknowledges more varied purposes for undertaking these projects and a different ''basket'' of transit benefits.

FTA estimates the paperwork burden on project sponsors involved with developing and reporting the information to FTA will be lowered if the proposals in the NPRM and accompanying policy guidance are adopted based on the above mentioned

benefits. FTA estimates 15 hours of paperwork burden reductions for each of the estimated 135 annual respondents resulting in $150,000 in benefits on an annual basis.

C. Departmental Significance

This proposed rule is a ''significant regulation'' as defined by the Department's Regulatory Policies and Procedures because it implements the Departmental initiative to revise, simplify, and streamline the New and Small Starts processes. This NPRM is expected to generate interest from sponsors of major transit capital projects, the general public, and Congress.

D. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* FTA evaluated the likely effects of the proposals contained in this NPRM on small entities. Based on this evaluation, FTA believes that the proposals contained in this NPRM will not have a significant economic impact on a substantial number of small entities because the proposals concern only New and Small Starts which, by their scale and nature, are not usually undertaken by small entities. FTA seeks public comment on this assessment.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), a Federal agency may not conduct or sponsor the collection of information without obtaining approval and a control number from the Office of Management and Budget (OMB). FTA has been collecting project evaluation information from project sponsors under the existing OMB approval for this program (OMB No. 2132–0561) entitled ''49 CFR Part 611 Major Capital Investment Projects.''

FTA has a longstanding requirement to evaluate proposed projects against a prescribed set of statutory criteria at specific points during the projects' development including when they seek to enter preliminary engineering, final design, and a Full Funding Grant Agreement. In addition, FTA is required by law to report on its project evaluations and ratings annually to Congress. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) established in law a set of criteria that proposed projects had to meet in order to be eligible for federal funding. The requirement for summary project ratings has been in place since 1998. Thus, the requirements for project evaluation and data collection for New Starts projects are not new. One addition included in SAFETEA–LU is the Small Starts program. The Small Starts program enables smaller cost projects with a smaller requested share of Section 5309 major capital investment funds to progress through a simplified and streamlined project evaluation and data collection process. In general, the information used by FTA for New and Small Starts project evaluation and rating should arise as a part of the normal planning process. However, due to modifications in the proposed project evaluation criteria and FTA evaluation and rating procedures for the New Starts program and the addition of the Small Starts program in the NPRM, some information be beyond the scope of ordinary planning activities.

Eligible applicants under the major capital investment program are public bodies and agencies (transit authorities and other state and local public bodies and agencies thereof) including states, municipalities, other political subdivisions of states; public agencies and instrumentalities of one or more states; and certain public corporations, boards, and commissions established under state law. Private corporations and private non-profit entities are not eligible for funding under the program; however, private corporations such as consulting and engineering and construction firms could be impacted by the regulation if they are hired by project sponsors to assist in the development of the data needed by FTA.

Applicants must submit information to FTA for evaluation and rating purposes each time they wish to enter the next phase of project development. In addition, applicants must submit updated information if the project scope and cost have changed materially since the most recent rating was assigned. FTA evaluates and rates projects in order to: (1) Decide whether proposed projects may advance into project development and construction for Small Starts and advance from alternatives analysis into preliminary engineering and then final design and construction for New Starts projects; (2) assign ratings to proposed projects for the *Annual Report on Funding Recommendations;* and (3) develop funding recommendations for the administration's annual budget request.

FTA needs to have accurate information on the status and projected benefits of proposed New and Small Starts projects on which to base its decisions regarding funding recommendations in the President's budget. As discretionary programs, both the New and Small Starts programs require FTA to identify proposed projects that are worthy of federal investment, and are ready to proceed with project development and construction activities.

The law also requires that FTA evaluate the performance of the projects funded through the New and Small Starts programs in meeting ridership and cost estimates two years after they are opened for service, through implementation of a ''before-and-after'' study requirement. This also helps to evaluate the success of the grant program itself for purposes of the Government Performance and Results Act.

FTA has tried to minimize the burden of the collection of information, and requests that project sponsors submit project evaluation data by electronic means. FTA has developed standard format templates for project sponsors to complete that automatically populate data used in more than one form. FTA then utilizes spreadsheet models to evaluate and rate projects based on the information submitted. In addition, FTA is proposing in the NPRM to make available a simplified national model that can estimate project trips based on simple inputs including census data and project characteristics.

Where and when possible, FTA makes use of the information already collected by New and Small Starts project sponsors as part of the planning process. However, as each proposed project develops at a different pace, FTA has a duty to base its funding decisions on the most recent information available. Project sponsors often find it necessary to develop updated information specifically for purposes of the New or Small Starts program. This is particularly true for the *Annual Report on Funding Recommendations,* which is a supporting document to the President's annual budget request to Congress. However, in order to reduce the reporting burden on project sponsors, FTA instituted a policy that Annual Report submissions are only required of projects that are seeking a funding recommendation or have changed significantly in cost or scope from the last evaluation.

FTA estimates current overall New and Small Starts annual paperwork burden hours to be approximately 275 hours for each of the estimated 135 respondents totaling 37,070 hours and annual costs totaling $2,780,250. The proposals in this NPRM and accompanying proposed guidance, if adopted, would modify the time required to prepare and submit an applications. Thus, FTA estimates burden hours would be approximately

260 hours for each of the estimated 135 respondents totaling 35,070 hours and annual costs totaling $2,630,250. Additional information will be required of project sponsors due to the proposed addition of several new measures in the NPRM, however, FTA has also proposed simplified methods of data collection and data estimation (e.g., the proposal to no longer require sponsors to model a Transportation System Management (TSM) alternative, the proposal to allow estimation of project trips using an FTA-developed national model rather than local travel forecasting models, standard factoring approaches). Thus, this NPRM and accompanying proposed guidance is estimated to reduce the net paperwork burden for project sponsors. These and other paperwork requirement trade-offs were an express objective in developing this NPRM and accompanying proposed guidance. The amount of paperwork burden is partially proportionate to the scale of the project and the determination by the project sponsor whether it will choose to develop detailed forecasts of project benefits (instead of the simplified default methods FTA is proposing in its guidance). Such increased burdens are at the sponsor's discretion, rather than a requirement of this NPRM or the accompanying proposed policy guidance. Most of the estimated paperwork reduction would be realized when project sponsors are preparing the application for the first time, which is the preliminary engineering request for New Starts projects and the project development request for Small Starts projects.

The table below shows the average annual project paperwork burden across sponsors of New Starts and Small Starts projects if the proposals in this NPRM are adopted.

TOTAL PROJECT SPONSOR COST AND HOURS *

Task	# Annual occurrences	Average hours per occurrence	Total hours	$ Total
Data Submission, Evaluation, and Ratings				
NEW STARTS:				
(A) PE Request	10	350	3500	$262,500
(B) Annual Report	20	75	1500	112,500
(C) Final Design Request	6	75	450	33,750
(D) FFGA Approval	5	50	250	18,750
Subtotal			5,700	427,500
SMALL STARTS:				
(A) Project Development	10	60	600	45,000
(B) Annual Report	10	25	250	18,750
(C) PCGA Approval	4	100	400	30,000
Subtotal			1,250	93,750
Data Sub, Eval, and Ratings Total			6,950	521,250
Before and After Data Collection				
NEW STARTS:				
(A) Data Collection Plan	4	80	320	24,000
(B) Before Data Collection	4	3000	12000	900,000
(C) Documentation of Forecasts	4	160	640	48,000
(D) After Data Collection	4	3000	12000	900,000
(E) Analysis and Reporting	4	240	960	72,000
Subtotal			25,920	1,944,000
SMALL STARTS:				
(A) Data Collection Plan	10	10	100	7,500
(B) Before Data Collection	10	80	800	60,000
(C) Documentation of Forecasts	10	10	100	7,500
(D) After Data Collection	10	80	800	60,000
(E) Analysis and Reporting	10	40	400	30,000
Subtotal			2,200	165,000
Before and After Total			28,120	2,109,000
Total			35,070	2,630,250

The estimates for total number of annual submissions are based on projected annual workload. The estimated average number of hours per task is based on information shared by a sample of project sponsors. Estimated hourly costs are based on information informally shared by local project sponsors and the professional judgment of FTA staff.

Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

The collections of information proposed by this NPRM, and identified

as such, have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Please submit any comments on the proposed collections to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Transit Administration. OMB also encourages commenters to submit their comments via email to *oira_submissions@omb.eop.gov.*

F. Executive Order 13132

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. The proposed regulations would implement a discretionary grant program that would make funds available, on a competitive basis, to States, local governments, and transit agencies. The requirements only apply to those entities seeking funds under this chapter, and thus this action would have not substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. FTA has also determined that this proposed action would not preempt any State law or regulation or affect the States' ability to discharge traditional State governmental functions. Based on this analysis, it has been determined that the proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Comment is solicited specifically on the Federalism implications of this proposal.

G. National Environmental Policy Act

FTA has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321), and has determined that this proposed action would not have any effect on the quality of the environment. This action qualifies for a categorical exclusion under FTA's NEPA regulations at 771.117(c)(20), which covers the ''[p]romulgation of rules, regulations, and directives.''

H. Energy Act Implications

The proposals contained in this NPRM and accompanying proposed guidance would likely have a positive effect on energy consumption because, through the Federal investment in public transportation projects, these projects would increase the use of public transportation.

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

Executive Order 13175 requires agencies to ensure meaningful and timely input from Indian tribal government representatives in the development of rules that ''significantly or uniquely affect'' Indian communities and that impose ''substantial and direct compliance costs'' on such communities. We invite Indian tribal governments to provide comments on the effect that adoption of specific proposals in this NPRM and accompanying proposed guidance may have on Indian communities.

J. Unfunded Mandates Reform Act

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more in any one year.

K. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under authority of section 3011 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which requires the Secretary of Transportation to prescribe regulations for Small Starts capital investment projects funded under 49 U.S.C. 5309 with a Federal share of less than $75,000,000 and a total cost of less than $250,000,000. In addition, this NPRM and its accompanying proposed guidance implements changes made by section 3011 of SAFETEA–LU to the New Starts program for funding capital investment projects with a higher Federal share or total cost than that specified for the Small Starts program.

L. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

VII. Proposed Regulatory Text

List of subjects in 49 CFR part 611

Government contracts; Grant programs—transportation; Public transportation.

For the reasons stated in the preamble, the Federal Transit Administration proposes to revise 49 CFR part 611 to read as follows:

PART 611—MAJOR CAPITAL INVESTMENT PROJECTS

Subpart A—General Provisions

Sec.
611.101 Purpose and contents
611.103 Applicability
611.105 Definitions
611.107 Relation to the planning processes

Subpart B—New Starts

611.201 Eligibility
611.203 Project justification criteria
611.205 Local financial commitment criteria
611.207 Overall project ratings
611.209 Project development process
611.211 Before and after study

Subpart C—Small Starts

611.301 Eligibility
611.303 Project justification criteria
611.305 Local financial commitment criteria
611.307 Overall project ratings
611.309 Project development process
Appendix A to Part 611—Description of Measures Used for Project Evaluation

Authority: 49 U.S.C. 5309.

Subpart A—General Provisions

§ 611.101 Purpose and contents.

(a) This part prescribes the process that applicants must follow to be considered eligible for capital investment grants for a new fixed guideway, an extension to a fixed guideway, or a corridor-based bus system (known as New Starts and Small Starts). Also, this part prescribes the procedures used by FTA to evaluate and rate proposed New Starts projects as required by 49 U.S.C. 5309(d), and Small Starts projects as required by 49 U.S.C. 5309(e).

(b) This part defines how the results of the evaluation described in paragraph (a) of this section will be used to:

(1) Approve entry into preliminary engineering and final design for New Starts projects, as required by 49 U.S.C. 5309(d)(5)(A);

(2) Approve entry into project development for Small Starts projects, as required by 49 U.S.C. 5309(e)(6)(A);

(3) Rate projects as ''high,'' ''medium-high,'' ''medium,'' ''medium-low'' or ''low'' as required by 49 U.S.C. 5309(d)(5)(B) and 49 U.S.C. 5309(e)(6)(B);

(4) Assign individual ratings for each of the project justification criteria specified in 49 U.S.C. 5309(d)(2)(C) and 49 U.S.C. 5309(e)(2)(B);

(5) Determine project eligibility for Federal funding commitments, in the form of Full Funding Grant Agreements (FFGA) for New Starts projects and Project Construction Grant Agreements (PCGA) for Small Starts projects; and

(6) Support funding recommendations for the New Starts and Small Starts programs for the Administration's annual budget request.

(c) The information collected and ratings developed under this part will form the basis for the *Annual Report on Funding Recommendations,* required by 49 U.S.C. 5309(k)(1).

§ 611.103 Applicability.

(a) This part applies to all proposals for Federal major capital investment funds under 49 U.S.C. 5309 for new fixed guideways, extensions to fixed guideways, and corridor-based bus systems.

(b) This part does not apply to projects for which an FFGA or PCGA has already been executed, nor to projects that have been approved into preliminary engineering or project development. The regulations in existence prior to the effective date of this rule will continue to apply to projects for which an FFGA or PCGA has already been executed and may continue to apply to projects approved into preliminary engineering, final design, or project development.

§ 611.105 Definitions.

The definitions established by Titles 12 and 49 of the United States Code, the Council on Environmental Quality's regulation at 40 CFR parts 1500–1508, and FHWA–FTA regulations at 23 CFR parts 450 and 771 are applicable. In addition, the following definitions apply to this part:

Alternatives analysis is a corridor-level analysis that is an assessment of a wide range of public transportation alternatives designed to address a transportation problem in a corridor or subarea and results in the adoption of a locally preferred alternative by the appropriate State and/or local agencies and official boards through a public process.

Corridor-based bus project means a bus capital project where:

(1) A substantial portion of the project operates in a separate right-of-way dedicated for public transit use during peak hour operations; or

(2) The project represents a substantial investment in a defined corridor as demonstrated by features such as park-and-ride lots, transit stations, bus arrival and departure signage, intelligent transportation systems technology, traffic signal priority, off-board fare collection, advanced bus technology, and other features that support the long-term corridor investment.

Early system work agreement means a contract, pursuant to the requirements in 49 U.S.C. 5309(g)(3), that allows some construction work and other clearly defined elements of a project to proceed prior to execution of a Full Funding Grant Agreement. It typically includes a limited scope of work that is less than the full project scope of work and specifies the amount of Federal New Starts participation that will be provided for the defined scope of work included in the agreement.

ESWA means early system work agreement.

Extension to fixed guideway means a project to extend an existing fixed guideway or planned fixed guideway.

FFGA means a full funding grant agreement.

Final design is the final phase of project development for New Starts projects, and includes (but is not limited to) the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents. During final design all remaining local funding must be committed.

Fixed guideway means a public transportation facility that utilizes and occupies a separate right-of-way, or rail line, for the exclusive use of mass transportation and other high occupancy vehicles, or uses a fixed catenary system and a right-of-way usable by other forms of transportation. This includes, but is not limited to, rapid rail, light rail, commuter rail, automated guideway transit, people movers, ferry boat service, and fixed-guideway facilities for buses (such as bus rapid transit) and other high occupancy vehicles. A new fixed guideway means a newly-constructed fixed guideway in a corridor or alignment where no such guideway exists.

FTA means the Federal Transit Administration.

Full funding grant agreement means a contract that defines the scope of a project, the Federal financial contribution, and other terms and conditions.

Locally preferred alternative means an alternative evaluated through an alternatives analysis and adopted by the appropriate State and/or local agencies and official boards through a public process.

Major capital transit investment means any project that involves the construction of a new fixed guideway, extension of an existing fixed guideway, or a corridor-based bus system for use by mass transit vehicles.

Metropolitan transportation plan means a financially constrained long-range plan, developed pursuant to 23 CFR Part 450, that includes sufficient financial information for demonstrating that projects can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the Federally supported transportation system is being adequately operated and maintained. In areas classified by the Environmental Protection Agency as ''non attainment'' or ''maintenance'' of air quality standards, the metropolitan transportation plan must have been found by DOT to be in conformity with the applicable State Implementation Plan.

NEPA process means those procedures necessary to meet the requirements of the National Environmental Policy Act of 1969 (NEPA), as amended, at 23 CFR Part 771; the NEPA process is completed when the project receives a Categorical Exclusion, a Finding of No Significant Impact (FONSI) or a Record of Decision (ROD).

New Starts means a new fixed guideway, or an extension to an existing new fixed guideway with a total capital cost of $250,000,000 or more or a request of $75,000,000 or more in funding from 49 U.S.C. 5309.

New Starts funds mean funds granted by FTA for a New Starts project pursuant to 49 U.S.C. 5309(d).

No-build alternative means an alternative that includes only the current transportation system as well as the transportation investments committed in the Transportation Improvement Plan (TIP) required by 23 CFR Part 450.

Preliminary engineering is a phase of project development for New Starts projects during which the scope of the proposed project is finalized; estimates of project costs, benefits and impacts are refined; NEPA requirements are completed; project management plans and fleet management plans are further developed; and a majority of local funding is committed.

Project development is a phase in the Small Starts process during which the scope of the proposed project is finalized; estimates of project costs, benefits and impacts are refined; NEPA requirements are completed; project management plans and fleet management plans are further developed; and local funding is committed. It also includes (but is not limited to) the preparation of final construction plans (including construction management plans), detailed specifications, construction cost estimates, and bid documents.

Secretary means the Secretary of Transportation.

Small Starts means a new fixed guideway, an extension to an existing fixed guideway, or a corridor-based bus system, with a total capital cost of less than $250,000,000 and a request for less than $75,000,000 in funding from 49 U.S.C. 5309.

Small Starts funds means funds granted by FTA for a Small Starts project pursuant to 49 U.S.C. 5309(e).

§ 611.107 Relation to the planning processes.

(a) All New Starts and Small Starts projects proposed for funding assistance under this part must emerge from the metropolitan and Statewide planning process, consistent with 23 CFR Part 450 and be included in the financially-constrained long range transportation plan required under 23 CFR Part 450.

(b) Alternatives analysis. To be eligible for FTA major capital investment funding, local project sponsors must perform an alternatives analysis that:

(1) Develops information on the benefits, costs, and impacts of alternative strategies to address a transportation problem in a given corridor sufficient to enable the Secretary to evaluate project justification and local financial commitment as required by 49 U.S.C. 5309;

(2) Includes a no-build alternative and an appropriate number of build alternatives;

(3) Results in the selection of a locally preferred alternative; and

(3) Results in the adoption of the locally preferred alternative as part of the metropolitan transportation plan.

Subpart B—New Starts

§ 611.201 Eligibility.

(a) To be eligible for a preliminary engineering or final design grant under this part for a new fixed guideway or an extension to a fixed guideway, a project must:

(1) Be a New Starts project as defined in § 611.105; and

(2) Have completed an alternatives analysis.

(b) To be eligible for a construction grant under Sec. 5309 for a new fixed guideway or extension to a fixed guideway, a project must:

(1) Be a New Starts project as defined in § 611.105;

(2) Have completed alternatives analysis, preliminary engineering, and final design;

(3) Receive a ''medium'' or better rating on project justification pursuant to § 611.203;

(4) Receive a ''medium'' or better rating on local financial commitment pursuant to § 611.205;

(5) Meet the other requirements of Chapter 53 of Title 49, U.S. Code; and

(6) Be authorized for construction by Federal law.

§ 611.203 Project justification criteria.

(a) To perform the statutorily required evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through preliminary engineering and final design.

(1) The method used to make this determination will be a multiple measure approach by which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The measures for these criteria are specified in Appendix A and elaborated on in policy guidance issued periodically by FTA whenever significant changes are proposed and subject to a public comment period, but not less frequently than every two years, as required by 49 U.S.C. 5309(d)(6).

(3) The measures will be applied to projects defined by project sponsors that are proposed to FTA for New Starts funding.

(4) The ratings for each of the criteria in § 611.203(b)(1)–(5) will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.''

(b) The project justification criteria are as follows:

(1) Mobility improvements.

(2) Environmental benefits.

(3) Operating efficiencies.

(4) Economic development effects.

(5) Cost effectiveness.

(6) Existing land use, transit supportive land use policies, and future patterns.

(7) Other factors. These may include additional factors relevant to local and national priorities and relevant to the success of the project, and are defined further in Appendix A and the policy guidance.

(c) In evaluating proposed New Starts projects under these criteria:

(1) As a candidate project proceeds through preliminary engineering and final design, a greater level of commitment will be expected with respect to transit supportive land use plans and policies, the non-Federal New Starts funding share of the project's cost, and the project sponsor's technical capacity to implement the project.

(2) For any criteria under paragraph (b) of this section that use incremental measures, the point for comparison will be defined in policy guidance.

(d) FTA may amend the measures for these project justification criteria. Any such amendment will be included in policy guidance.

(e) From time to time FTA may publish through policy guidance standards based on characteristics of projects and/or corridors to be served. If a proposed project can meet the established standards, FTA may assign an automatic rating on one or more of the project justification criteria outlined in this section.

(f) The individual ratings for each of the criteria described in this section will be combined into a summary project justification rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low,'' through a process that gives comparable, but not necessarily equal, weight to each criterion. ''Other factors'' will also be considered as appropriate. The process by which the project justification rating will be developed, including the assigned weights, will be described in policy guidance.

§ 611.205 Local financial commitment criteria.

In order to approve a grant under 49 U.S.C. 5309 for a New Starts project, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(d)(4). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed share of the project's capital costs to be funded from sources other than New Starts funds, including both the non-New Starts match required by Federal law and any additional state, local or other Federal capital funding (also known as ''overmatch'');

(b) The current capital and operating financial condition of the project sponsor;

(c) The commitment of capital and operating funds for the project and the entire transit system; and

(d) The accuracy and reliability of the capital and operating costs and revenue estimates and the financial capacity of the project sponsor.

(e) From time to time FTA may publish through policy guidance standards based on characteristics of projects and/or corridors to be served. If a proposed project can meet the established standards, FTA may assign an automatic rating on one or more of the local financial commitment criteria outlined in this section.

(f) For each proposed project, ratings for paragraphs (a) through (d) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,''

''medium-low,'' or ''low.'' For paragraph (a) of this section, the percentage of New Starts funding sought from 49 U.S.C. 5309 will be rated and used to develop the summary local financial commitment rating, but only if it improves the rating and not if it worsens the rating.

(g) The ratings for each measure described in this section will be combined into a summary local financial commitment rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The process by which the summary local financial commitment rating will be developed, including the assigned weights to each of the measures, will be described in policy guidance.

§ 611.207 Overall New Starts project ratings.

(a) The summary ratings developed for project justification and local financial commitment (§§ 611.203(f) & 611.205(g)) will form the basis for the overall rating for each New Starts project.

(b) FTA will assign overall project ratings to each proposed project of ''high,'' ''medium-high, ''medium,'' ''medium-low,'' or ''low'' as required by 49 U.S.C. 5309(d)(5)(B).

(1) These ratings will indicate the overall merit of a proposed New Starts project at the time of evaluation.

(2) Ratings for individual projects will be developed upon entry into preliminary engineering, updated for entry into final design, and prior to an FFGA. Additionally, ratings may be updated while a project is in preliminary engineering or final design if the project scope and cost have changed materially since the most recent rating was assigned.

(c) These ratings will be used to:

(1) Approve or deny advancement of a proposed project into preliminary engineering or final design;

(2) Approve or deny projects for ESWAs and FFGAs; and

(3) Support annual funding recommendations to Congress in the *Annual Report on Funding Recommendations* required by 49 U.S.C. 5309(k)(1).

(d) FTA will assign overall ratings for proposed New Starts projects by averaging the summary ratings for project justification and local financial commitment. When the average of these ratings is unclear (e.g. summary project justification rating of ''medium-high'' and summary local financial commitment rating of ''medium''), FTA will round up the overall rating to the higher rating except in the following circumstances:

(1) A ''medium'' overall rating requires a rating of at least ''medium'' on both project justification and local financial commitment.

(2) If a project receives a ''low'' rating on either project justification or local financial commitment, the overall rating will be ''low.''

§ 611.209 Project development process.

(a) Preliminary engineering.

(1) A proposed project can be considered for advancement into preliminary engineering only if:

(i) An alternatives analysis has been completed;

(ii) The proposed project is adopted as the locally preferred alternative by the metropolitan planning organization into the metropolitan transportation plan;

(iii) The project sponsor has demonstrated adequate technical capability to carry out preliminary engineering for the proposed project; and

(iv) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in § 611.201 through 611.207.

(3) At a minimum, a proposed project must receive an overall rating of ''medium'' or better to be approved for entry into preliminary engineering.

(4) This part does not in any way revoke prior FTA approvals to enter preliminary engineering made prior to [EFFECTIVE DATE OF FINAL RULE].

(5) Projects approved by FTA to advance into preliminary engineering receive automatic pre-award authority to incur project costs prior to grant approval for preliminary engineering activities (potentially reimbursable upon funding availability). Upon completion of the National Environmental Policy Act (NEPA) requirements, FTA extends automatic pre-award authority to projects in preliminary engineering to incur costs for utility relocation and real property acquisition (potentially reimbursable when approved into final design), as well as for vehicle purchases (potentially reimbursable when approved for construction).

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(b) Final design.

(1) A proposed project can be considered for advancement into final design only if:

(i) FTA has determined the project to be a Categorical Exclusion, or has issued a Finding of No Significant Impact (FONSI) or a Record of Decision (ROD) under NEPA for the project, in accordance with FTA environmental regulations at 23 CFR Part 771;

(ii) The project sponsor has demonstrated adequate technical capability to carry out final design for the proposed project; and

(iii) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in § 611.201 through 611.207.

(3) At a minimum, a proposed project must receive an overall rating of ''medium'' or better to be approved for entry into final design.

(4) This part does not in any way revoke FTA approvals to enter final design that were made prior to [EFFECTIVE DATE OF FINAL RULE].

(5) Projects approved to advance into final design receive automatic pre-award authority to incur project costs prior to grant approval for final design activities, demolition, and non-construction activities such as procurement of long-lead time items or items for which market conditions play a significant role in the acquisition price. This includes, but is not limited to procurement of rails, ties, and other specialized equipment, and commodities. These costs are potentially reimbursable upon grant approval.

(i) This pre-award authority does not extend to construction, nor does it constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(c) Full Funding Grant Agreements.

(1) FTA will determine whether to execute an FFGA based on:

(i) The evaluation and rating of the project as described in § 611.201 through 611.207;

(ii) The technical capability of the project sponsor to complete the proposed New Starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed New Starts project.

(2) FFGAs will be executed only for those projects that:

(i) Are authorized for final design and construction by Federal law;

(ii) Receive an overall rating of ''medium'' or better;

(iii) Have completed the appropriate steps in the project development process;

(iv) Meet all applicable Federal and FTA program requirements; and

(v) Are ready to utilize New Starts funds, consistent with available program authorization.

(3) When FTA decides to provide New Starts funds for construction of a New Starts project, FTA will negotiate an FFGA with the project sponsor during final design of that project. Pursuant to the terms and conditions of the FFGA:

(i) A baseline cost and baseline schedule of the project will be established and a maximum level of New Starts funds will be fixed;

(ii) The project sponsor will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated to reach that point using non-New Starts funds;

(iii) FTA and the project sponsor will establish a schedule for anticipating Federal New Starts contributions during the final design and construction period; and

(iv) Specific annual contributions of New Starts funds under the FFGA will be subject to the availability of budget authority and the ability of the project sponsor to use the funds effectively.

(d) Commitments.

(1) The total amount of Federal New Starts funding obligations under ESWAs, FFGAs, and potential obligations under Letters of Intent will not exceed the amount authorized for New Starts under 49 U.S.C. 5309.

(2) FTA may also make a ''contingent commitment'' of New Starts funds, which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

§ 611.211 Before and After Study.

(a) During preliminary engineering, project sponsors shall submit to FTA a plan for collection and analysis of information to identify the characteristics, costs, and impacts of the New Starts project and the accuracy of the forecasts prepared during development of the project.

(1) The Before and After Study plan shall consider:

(i) Characteristics including the physical scope of the project, the service provided by the project, any other changes in service provided by the transit system, and the schedule of transit fares;

(ii) Costs including the capital costs of the project and the operating and maintenance costs of the transit system in appropriate detail; and

(iii) Impacts including changes in transit service quality, ridership, and fare levels.

(2) The plan shall provide for:

(i) Documentation and preservation of the predicted scope, service levels, capital costs, operating costs, and ridership of the project;

(ii) Collection of ''before'' data on the transit service levels and ridership patterns of the current transit system including origins and destinations, access modes, trip purposes, and rider characteristics;

(iii) Documentation of the actual capital costs of the as-built project;

(iv) Collection of ''after'' data two years after opening of the project, including the analogous information on transit service levels and ridership patterns, plus information on operating costs of the transit system in appropriate detail;

(v) Analysis of the costs and impacts of the project; and

(vi) Analysis of the consistency of the predicted and actual characteristics, costs, and impacts of the project and identification of the sources of any differences.

(vii) Preparation of a final report within three years of project opening to present the actual characteristics, costs, and impacts of the project and an assessment of the accuracy of the predictions of these outcomes.

(3) For funding purposes, preparation of the plan for collection and analysis of data is an eligible part of the proposed project.

(4) Approval of the plan by FTA shall be a pre-requisite to approval of the project into final design.

(b) The FFGA will require implementation of the plan prepared in accordance with paragraph (a) of this section.

(1) Satisfactory progress on implementation of the plan required under paragraph (a) of this section shall be a prerequisite to approval of an FFGA.

(2) For funding purposes, collection of the ''before'' data, collection of the ''after'' data, and the development and reporting of findings are eligible parts of the proposed project.

(3) FTA may condition receipt of funding provided for the project in the FFGA upon satisfactory submission of the report required under this section.

Subpart C—Small Starts

§ 611.301 Eligibility.

(a) To be eligible for a project development grant under this part for a new fixed guideway, an extension to a fixed guideway, or a corridor-based bus system, a project must:

(1) Be a Small Starts project as defined in § 611.105; and

(2) Have completed an alternatives analysis.

(b) To be eligible for a construction grant under this part for a new fixed guideway, an extension to a fixed guideway, or a corridor-based bus system, a project must:

(1) Be a Small Starts project as defined in § 611.105;

(2) Have completed an alternatives analysis;

(3) Receive a ''medium'' or better rating on project justification pursuant to § 611.303;

(4) Receive a ''medium'' or better rating on local financial commitment pursuant to § 611.305;

(5) Meet the other requirements of Chapter 53 of Title 49, U.S. Code; and

(6) Be authorized for construction by Federal law.

§ 611.303 Project justification criteria.

(a) To perform the statutorily required evaluations and assign ratings for project justification, FTA will evaluate information developed locally through alternatives analyses and refined through project development.

(1) The method used to make this determination will be a multiple measure approach by which the merits of candidate projects will be evaluated in terms of each of the criteria specified by this section.

(2) The measures for these criteria are specified in Appendix A and elaborated on in policy guidance issued periodically by FTA whenever significant changes are proposed and subject to a public comment period, but not less frequently than every two years, as required by 49 U.S.C. 5309(d)(6).

(3) The measures will be applied to projects defined by project sponsors that are proposed to FTA for Small Starts funding.

(4) The ratings for each of the criteria in § 611.303(b)(1)–(5) will be expressed in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.''

(b) The project justification criteria are as follows:

(1) Cost effectiveness, at the time of revenue service.

(2) Economic development effects.

(3) Existing land use, transit supportive land use policies, and future patterns.

(4) Other factors. These may include additional factors relevant to local and national priorities and relevant to the success of the project.

(c) In evaluating proposed Small Starts projects under these criteria:

(1) As a candidate project proceeds through project development, a greater level of commitment will be expected with respect to transit supportive land use plans and policies, the non-Federal Small Starts funding share of the project's cost, and the project sponsor's technical capacity to implement the project.

(2) For any criteria under paragraph (b) of this section that use incremental measures, the point for comparison will be defined in policy guidance.

(d) FTA may amend the measures for these project justification criteria. Any such amendment will be included in policy guidance.

(e) From time to time FTA may publish through policy guidance standards based on characteristics of projects and/or corridors to be served. If a proposed project can meet the established standards, FTA may assign an automatic rating on one or more of the project justification criteria outlined in this section.

(f) The individual ratings for each of the criteria described in this section will be combined into a summary project justification rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low'' through a process that gives comparable, but not necessarily equal, weight to each criterion. ''Other factors'' will also be considered as appropriate. The process by which the project justification rating will be developed, including the assigned weights, will be described in policy guidance.

§ 611.305 Local financial commitment criteria.

In order to approve a grant under 49 U.S.C. 5309 for a Small Starts project, FTA must find that the proposed project is supported by an acceptable degree of local financial commitment, as required by 49 U.S.C. 5309(e)(2)(c). The local financial commitment to a proposed project will be evaluated according to the following measures:

(a) The proposed share of the project's capital costs to be funded from sources other than Small Starts funds, including both the non-Small Starts match required by Federal law and any additional state, local, or other Federal capital funding (known as ''overmatch'');

(b) The current capital and operating financial condition of the project sponsor;

(c) The commitment of capital and operating funds for the project and the entire transit system; and

(d) The accuracy and reliability of the capital and operating costs and revenue estimates and the financial capacity of the project sponsor.

(e) From time to time FTA may publish through policy guidance standards based on characteristics of projects and/or the corridors to be served. If a proposed project can meet the established standards, FTA may assign an automatic rating on one or more of the local financial commitment criteria outlined in this section.

(f) For each proposed project, ratings for paragraphs (a) through (d) of this section will be reported in terms of descriptive indicators, as follows: ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' For paragraph (a) of this section, the percentage of Small Starts funding sought from 49 U.S.C. 5309 will be rated and used to develop the summary local financial commitment rating, but only if it improves the rating and not if it worsens the rating.

(g) The ratings for each measure described in this section will be combined into a summary local financial commitment rating of ''high,'' ''medium-high,'' ''medium,'' ''medium-low,'' or ''low.'' The process by which the summary local financial commitment rating will be developed, including the assigned weights to each of the measures, will be described in policy guidance.

§ 611.307 Overall project ratings.

(a) The summary ratings developed for project justification and local financial commitment (§§ 611.303(f) and 305(g)) will form the basis for the overall rating for each project.

(b) FTA will assign overall project ratings to each proposed project of ''high,'' ''medium-high, ''medium,'' ''medium-low,'' or ''low,'' as required by 49 U.S.C. 5309(e)(8).

(1) These ratings will indicate the overall merit of a proposed Small Starts project at the time of evaluation.

(2) Ratings for individual projects will be developed upon entry into project development and prior to a PCGA. Additionally, ratings may be updated while a project is in project development if the project scope and cost have changed materially since the most recent rating was assigned.

(c) These ratings will be used to:

(1) Approve or deny advancement of a proposed project into project development;

(2) Approve or deny projects for PCGAs; and

(3) Support annual funding recommendations to Congress in the *Annual Report on Funding Recommendations* required by 49 U.S.C. 5309(k)(1).

(d) FTA will assign overall ratings for proposed Small Starts projects by averaging the summary ratings for project justification and local financial commitment. When the average of these ratings is unclear (e.g., summary project justification rating of ''medium-high'' and summary local financial commitment rating of ''medium''), FTA will round up the overall rating to the higher rating except in the following circumstances:

(1) A ''medium'' overall rating requires a rating of at least ''medium'' on both project justification and local financial commitment.

(2) If a project receives a ''low'' rating on either project justification or local financial commitment, the overall rating will be ''low.''

§ 611.309 Project development process.

(a) Project development.

(1) A proposed project can be considered for advancement into project development only if:

(i) An alternatives analysis has been completed;

(ii) The proposed project is adopted as the locally preferred alternative by the metropolitan planning organization into the metropolitan transportation plan;

(iii) The project sponsor has demonstrated adequate technical capability to carry out project development for the proposed project; and

(iv) All other applicable Federal and FTA program requirements have been met.

(2) FTA's approval will be based on the results of its evaluation as described in § 611.301 through 611.307.

(3) At a minimum, a proposed project must receive an overall rating of ''medium'' or better to be approved for entry into project development.

(4) This part does not in any way revoke prior FTA approvals to enter project development made prior to [EFFECTIVE DATE OF FINAL RULE].

(5) Projects approved by FTA to advance into project development receive automatic pre-award authority to incur project costs prior to grant approval for preliminary engineering activities (potentially reimbursable upon funding availability). Upon completion of the National Environmental Policy Act (NEPA) requirements, FTA extends automatic pre-award authority to projects in project development to incur costs for final design activities, utility relocation and real property acquisition, as well as for vehicle purchases, demolition, and non-construction activities such as procurement of long-lead time items or items for which market conditions play

a significant role in the acquisition price. This includes, but is not limited to procurement of rails, ties, and other specialized equipment, and commodities.

(i) This pre-award authority does not constitute a commitment by FTA that future Federal funds will be approved for the project.

(ii) All Federal requirements must be met prior to incurring costs in order to retain eligibility of the costs for future FTA grant assistance.

(b) Project construction grant agreements.

(1) FTA will determine whether to execute a PCGA based on:

(i) The evaluation and rating of the Small Starts project as described in § 611.301 through 611.307;

(ii) The technical capability of the project sponsor to complete the proposed Small Starts project; and

(iii) A determination by FTA that no outstanding issues exist that could interfere with successful implementation of the proposed Small Starts project.

(2) PCGAs will be executed only for those projects that:

(i) Are authorized for construction by Federal law;

(ii) Receive an overall rating of ''medium'' or better;

(iii) Have completed the appropriate steps in the project development process;

(iv) Meet all applicable Federal and FTA program requirements; and

(v) Are ready to utilize Small Starts funds, consistent with available program authorization.

(3) When FTA decides to provide Small Starts funds, FTA will negotiate a PCGA with the project sponsor during project development of that project. Pursuant to the terms and conditions of the PCGA:

(i) A baseline cost estimate and baseline schedule will be established and a maximum level of Small Starts funds will be fixed;

(ii) The project sponsor will be required to complete construction of the project, as defined, to the point of initiation of revenue operations, and to absorb any additional costs incurred or necessitated to reach that point using non-Small Starts funds;

(iii) FTA and the project sponsor will establish a schedule for anticipating Federal Small Starts contributions during the construction period; and

(iv) Specific annual Small Starts funds contributions under the PCGA will be subject to the availability of budget authority and the ability of the project sponsor to use the funds effectively.

(c) Commitments.

(1) The total amount of Federal Small Starts obligations under PCGAs and potential obligations under Letters of Intent will not exceed the amount authorized for Small Starts under 49 U.S.C. 5309.

(2) FTA may also make a ''contingent commitment'' of Small Starts funds, which is subject to future congressional authorizations and appropriations, pursuant to 49 U.S.C. 5309(g), 5338(b), and 5338(h).

Appendix A to Part 611—Description of Measures Used for Project Evaluation

A. New Starts

I. Project Justification

FTA will evaluate candidate New Starts projects according to the six project justification criteria established by 49 U.S.C. 5309(d)(2)(B). These measures have been developed according to the considerations identified at 49 U.S.C. 5309(d)(3) (''Evaluation of Project Justification''), including Other Factors.

From time to time, but not less than frequently than every two years as directed by U.S.C. 5309 (d)(6), FTA publishes policy guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may choose to amend these measures, pending the results of ongoing studies regarding transit benefit and cost evaluation methods. In addition, FTA may establish warrants for one or more of these criteria through which an automatic rating would be assigned based on the characteristics of the project and/or its corridor. FTA will develop these warrants based on analysis of the features of projects and/or corridor characteristics that would produce satisfactory ratings on one or more of the criteria. Such warrants would be included in draft policy guidance issued for comment before being finalized.

(a) Mobility Improvements.

(1) The total number of trips using the proposed project, with extra weight given to trips that would be made on the project by transit dependent persons.

(2) If the project sponsor chooses to consider project trips in the horizon year in addition to the current year, trips will be based on the weighted average of current-year and horizon-year.

(b) Environmental Benefits.

(1) Incremental annualized capital and operating cost of the project compared to the monetized value of the anticipated direct and indirect benefits to human health, safety, energy, and the air quality environment that are expected to result from implementation of the proposed project compared to:

(i) The existing environment with the transit system in the current year or,

(ii) At the discretion of the project sponsor, both the existing environment with the transit system in the current year and the no-build environment and transit system in the horizon year.

(2) Environmental benefits used in the calculation would include:

(i) Change in air quality criteria pollutants,

(ii) Change in energy use,

(iii) Change in greenhouse gas emissions, and

(iv) Change in safety.

(c) Operating Efficiencies.

(1) The change in operating and maintenance (O&M) cost per ''place-mile'' (passenger capacity of a vehicle multiplied by its annual revenue miles of service and summed over all vehicles in the transit system) compared to:

(i) The existing transit system in the current year or,

(ii) At the discretion of the project sponsor, both the existing transit system in the current year and the no-build transit system in the horizon year.

(d) Cost Effectiveness.

(1) The annualized cost per trip on the project, where cost includes changes in capital, operating, and maintenance costs compared to:

(i) The existing transit system in the current year, or

(ii) At the discretion of the project sponsor, both the existing transit system in the current year and the no-build transit system in the horizon year.

(e) Public transportation supportive land use policies and future patterns.

(1) Existing corridor and station area development;

(2) Existing corridor and station area development character;

(3) Existing station area pedestrian facilities, including access for persons with disabilities; (4) Existing corridor and station area parking supply; and

(5) Existing publically supported housing in the corridor.

(f) Economic Development.

(1) The extent to which a proposed project is likely to enhance additional, transit-supportive development based on the existing plans and policies to support economic development proximate to the project including:

(i) Growth management plans and policies;

(ii) Policies in place to support maintenance of or increases to the share of affordable housing in the project corridor; and

(iii) Performance and impact of policies.

(2) At the option of the project sponsor, an additional quantitative analysis (scenario-based estimate) to estimate indirect changes in VMT resulting from changes in development patterns that are anticipated to occur with implementation of the proposed project. The resulting environmental benefits would be calculated, monetized, and compared to the annualized capital and operating cost of the project.

(g) Other factors. Other factors may be considered in the project justification rating. Others factor may include, but are not limited to:

(1) The multimodal connectivity the proposed New Starts project will provide;

(2) Environmental justice considerations and equity issues;

(3) Livable Communities initiatives and local economic activities;

(4) The degree to which there are policies in place to locate federal, and other major public, facilities and investments in proximity to the proposed project;

(5) Consideration of innovative procurement, and construction techniques, including design-build turnkey applications; and

(6) Additional factors relevant to local and national priorities and to the success of the project.

II. Local Financial Commitment

FTA will use the following measures to evaluate the local financial commitment to a proposed New Starts project:

(a) The proposed share of total project costs from sources other than the Section 5309 major capital investment program, including other Federal transportation funds and the local match required by Federal law;

(b) The current financial condition, both capital and operating, of the project sponsor;

(c) The commitment of funds for both the proposed project and the ongoing operation and maintenance of the project sponsor's system once the project is built.

(d) The reasonableness of the financial plan, including planning assumptions, cost estimates, and the capacity to withstand funding shortfalls or cost overruns.

B. Small Starts

I. Project Justification

FTA will use several measures to evaluate candidate Small Starts projects according to the three project justification criteria established by 49 U.S.C. 5309(E)(4)(B), taking account of the considerations identified in 49 U.S.C. 5309(3)(4) (''Project Justification''), including Other Factors.

From time to time, but not less than frequently than every two years as directed by U.S.C. 5309 (d)(6), FTA publishes for comment technical guidance on the application of these measures, and the agency expects it will continue to do so. Moreover, FTA may choose to amend these measures, pending the results of ongoing studies regarding transit benefit and cost evaluation methods. In addition, FTA may establish warrants for one or more of these criteria through which an automatic rating would be assigned based on the characteristics of the project and/or its corridor. Such warrants would be included in the policy guidance so that they may be subject to public comment.

(a) Cost Effectiveness.

(1) The cost per trip on the project, where cost includes changes in capital, operating, and maintenance costs compared to:

(i) The existing transit system in the current year, or

(ii) At the discretion of the project sponsor, both the existing transit system in the current year and the no-build transit system in the horizon year.

(b) Public transportation supportive land use policies and future patterns.

(1) Existing corridor and station area development;

(2) Existing corridor and station area development character;

(3) Existing station area pedestrian facilities, including access for persons with disabilities;

(4) Existing corridor and station area parking supply.; and

(5) Existing publically supported housing in the corridor.

(c) Economic Development.

(1) The extent to which a proposed project is likely to enhance additional, transit-supportive development based on the existing plans and policies to support economic development proximate to the project including:

(i) Growth management plans and policies

(ii) Policies in place to support maintenance of or increases to the share of affordable housing in the project corridor; and

(c) Performance and impact of policies.

(2) At the option of the project sponsor, an additional quantitative analysis (scenario-based estimate) to estimate indirect changes in VMT resulting from changes in development patterns that are anticipated to occur with implementation of the proposed project. The resulting environmental benefits would be calculated, monetized, and compared to the annualized capital and operating cost of the project.

(d) Other factors. Other factors may be considered in the project justification rating. Others factor may include, but are not limited to:

(1) The multimodal connectivity the proposed Small Starts project will provide;

(2) Environmental justice considerations and equity issues,

(3) Opportunities for increased access to employment for low income persons;

(4) Livable Communities initiatives and local economic activities;

(5) Consideration of innovative procurement, and construction techniques, including design-build turnkey applications; and

(6) The degree to which there are policies in place to locate federal, and other major public, facilities and investments in proximity to the proposed project.

(7) Additional factors relevant to local and national priorities and to the success of the project.

II. Local Financial Commitment

If the Small Starts project sponsor can demonstrate the following, the project will qualify for a highly simplified financial evaluation:

(a) A reasonable plan to secure funding for the local share of capital costs or sufficient available funds for the local;

(b) The additional operating and maintenance cost to the agency of the proposed Small Starts project is less than 5 percent of the project sponsor's existing operating budget; and

(c) The project sponsor is in reasonably good financial condition, as demonstrated by the past three years' audited financial statements.

Small Starts projects that meet these measures and request greater than 50 percent Small Starts funding would receive a local financial commitment rating of Medium. Small Starts projects that request 50 percent or less in Small Starts funding would receive a High rating for local financial commitment.

FTA will use the following measures to evaluate the local financial commitment to a proposed Small Starts project if it cannot meet the conditions listed above:

(a) The proposed share of total project costs from sources other than the Section 5309 major capital investment program, including other Federal transportation funds and the local match required by Federal law;

(b) The current financial condition, both capital and operating, of the project sponsor;

(c) The commitment of funds for both the proposed project and the ongoing operation and maintenance of the project sponsor's system once the project is built.

(d) The reasonableness of the financial plan, including planning assumptions, cost estimates, and the capacity to withstand funding shortfalls or cost overruns.

Issued on: January 17, 2012.

Peter Rogoff,

Administrator, Federal Transit Administration.

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Part III

Department of Labor

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 1–2012]

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health

1. *Purpose.* To delegate authority and assign responsibility to the Assistant Secretary for Occupational Safety and Health.

2. *Authorities and Directives Affected.*

A. *Authorities.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.;* 5 U.S.C. 301; 5 U.S.C. 5315; the Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.;* the Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45; the McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357; the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333; the Maritime Safety Act of 1958, 33 U.S.C. 941; the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2); 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 (''Occupational Safety and Health Programs for Federal Employees'') (February 26, 1980); the Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105; the Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651; the International Safe Container Act, 46 U.S.C. 80507; the Safe Drinking Water Act, 42 U.S.C. 300j–9(i); the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610 (a)—(d); the Federal Water Pollution Control Act, 33 U.S.C. 1367; the Toxic Substances Control Act, 15 U.S.C. 2622; the Solid Waste Disposal Act, 42 U.S.C. 6971; the Clean Air Act, 42 U.S.C. 7622; the Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121; the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A; the Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129; the National Transit Systems Security Act, 6 U.S.C. 1142; the Federal Railroad Safety Act, 49 U.S.C. 20109; the Consumer Product Safety Improvement Act, 15 U.S.C. 2087; the Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C and the associated Fair Labor Standards Act authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations; Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; the Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281; and Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353.

B. *Directives Affected.* Secretary's Order 4–2010 is hereby superseded by this Order.

3. *Background.* This Order constitutes the basic Secretary's Order for the Occupational Safety and Health Administration (OSHA), superseding Order 4–2010. This Order amends the delegation and assignment of responsibility to OSHA for enforcement of Section 18C (protection of employees under Title I of the Affordable Care Act) of the Fair Labor Standards Act (29 U.S.C. 218C), as added by Section 1558 of the Affordable Care Act of 2010, Public Law 111–148, to clarify that OSHA's authority under Section 18C of the Fair Labor Standards Act includes the associated Fair Labor Standards Act authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations. This delegation and assignment of responsibility to OSHA under Section 18C of the Fair Labor Standards Act, along with the associated subpoena and investigations authority, is also set forth in Secretary's Order 5–2010, Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division, Sept. 2, 2010. This Order also delegates and assigns responsibility to OSHA for enforcement of (1) the Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281; and (2) Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353. All other authorities and responsibilities set forth in this Order were delegated or assigned previously to the Assistant Secretary for OSHA in Secretary's Order 4–2010, and this Order continues those delegations and assignments in full force and effect, except as expressly modified herein.

4. *Delegation of Authority and Assignment of Responsibility.*

A. *The Assistant Secretary for Occupational Safety and Health.*

(1) The Assistant Secretary for Occupational Safety and Health is delegated authority and assigned responsibility for administering the safety and health, and whistleblower programs and activities of the Department of Labor, except as provided in paragraph 4.A.(2) below, under the designated provisions of the following laws:

(a) Occupational Safety and Health Act of 1970, 29 U.S.C. 651, *et seq.*

(b) Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35, 37–41, 43–45.

(c) McNamara-O'Hara Service Contract Act of 1965, as amended, 41 U.S.C. 351–354, 356–357.

(d) Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 329, 333.

(e) Maritime Safety Act of 1958, 33 U.S.C. 941.

(f) National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 954(m)(2).

(g) 5 U.S.C. 7902 and any executive order thereunder, including Executive Order 12196 (''Occupational Safety and Health Programs for Federal Employees'') (February 26, 1980).

(h) Surface Transportation Assistance Act of 1982, 49 U.S.C. 31105.

(i) Asbestos Hazard Emergency Response Act of 1986, 15 U.S.C. 2651.

(j) International Safe Container Act, 46 U.S.C. 80507.

(k) Safe Drinking Water Act, 42 U.S.C. 300j–9(i).

(l) Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851.

(m) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610(a)–(d).

(n) Federal Water Pollution Control Act, 33 U.S.C. 1367.

(o) Toxic Substances Control Act, 15 U.S.C. 2622.

(p) Solid Waste Disposal Act, 42 U.S.C. 6971.

(q) Clean Air Act, 42 U.S.C. 7622.

(r) Wendell H. Ford Aviation Investment and Reform Act For the 21st Century, 49 U.S.C. 42121.

(s) Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A.

(t) Pipeline Safety Improvement Act of 2002, 49 U.S.C. 60129.

(u) National Transit Systems Security Act, 6 U.S.C. 1142.

(v) Federal Railroad Safety Act, 49 U.S.C. 20109.

(w) Affordable Care Act amendment to the Fair Labor Standards Act, 29 U.S.C. 218C. Authority and responsibility for section 18C of the FLSA (29 U.S.C. 218C) and the associated FLSA authorities in sections 9 and 11 (29 U.S.C. 209 and 211) to issue subpoenas and conduct investigations under section 18C are delegated and assigned to the Assistant Secretary for Occupational Safety and Health.

(x) Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act., Public Law 111–203.

(y) Section 40 of the Consumer Product Safety Improvement Act, 15 U.S.C. 2087.

(z) Seaman's Protection Act, 46 U.S.C. 2114 (SPA), as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281.

(aa) Section 402 of the FDA Food Safety Modernization Act, Public Law 111–353.

(bb) Responsibilities of the Secretary of Labor with respect to safety and health, or whistleblower provisions of any other Federal law except those responsibilities which are assigned to another DOL agency.

(2) The authority of the Assistant Secretary for Occupational Safety and Health under the Occupational Safety and Health Act of 1970 does not include authority to conduct inspections and investigations, issue citations, assess and collect penalties, or enforce any other remedies available under the statute, or to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) Temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

Nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for OSHA retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps. Moreover, the Assistant Secretary for OSHA retains all other agency authority and responsibility under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps, such as rulemaking authority.

(3) The Assistant Secretary for Occupational Safety and Health is also delegated authority and assigned responsibility for:

(a) Serving as Chairperson of the Federal Advisory Council on Occupational Safety and Health, as provided for by Executive Order 12196.

(b) Coordinating Agency efforts with those of other officials or agencies having responsibilities in the occupational safety and health area.

B. *The Assistant Secretary for Occupational Safety and Health* and the *Administrator, Wage and Hour Division* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see paragraph 4.A.(2) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

C. *The Solicitor of Labor* is responsible for providing legal advice and assistance to all Department of Labor officials relating to implementation and administration of all aspects of this Order. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

D. *The Commissioner of Labor Statistics* is delegated authority and assigned responsibility for:

(1) Furthering the purpose of the Occupational Safety and Health Act by developing and maintaining an effective program of collection, compilation, analysis, and publication of occupational safety and health statistics consistent with applicable law and Secretary's orders.

(2) Making grants to states or political subdivisions thereof in order to assist them in developing and administering programs dealing with occupational safety and health statistics under Sections 18, 23, and 24 of the Occupational Safety and Health Act.

(3) Coordinating the above functions with the Assistant Secretary for Occupational Safety and Health.

E. *The Regional Administrators for Occupational Safety and Health* are also hereby delegated authority and assigned responsibility to issue subpoenas and conduct investigations under Sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209 and 211, in cases arising under section 18C of the FLSA, 29 U.S.C. 218C.

5. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed in paragraph 4.a. above is reserved to the Secretary.

B. No delegation of authority or assignment of responsibility under this order will be deemed to affect the Secretary's authority to continue to exercise or further delegate such authority or responsibility.

C. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1–2010 (January 15, 2010).

6. *Effective Date.* This delegation of authority and assignment of responsibility is effective immediately.

Dated: January 18, 2012.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. 2012–1448 Filed 1–24–12; 8:45 am]

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FEDERAL REGISTER

Vol. 77 Wednesday,

No. 16 January 25, 2012

Part IV

The President

Memorandum of January 20, 2012—Federal Support for the Randolph-Sheppard Vending Facility Program

Federal Register
Vol. 77, No. 16
Wednesday, January 25, 2012

Presidential Documents

Title 3—

The President

Memorandum of January 20, 2012

Federal Support for the Randolph-Sheppard Vending Facility Program

Memorandum for the Heads of Executive Departments and Agencies

Thousands of Americans who are blind have embraced the entrepreneurial spirit that helps define our Nation as a land of opportunity. Through the Federal Randolph-Sheppard Vending Facility Program administered by the Department of Education, talented and creative individuals who are blind have acquired the management training and business skills necessary to realize the American dream—a lifetime of economic opportunity, independence, and self-sufficiency for themselves and their families.

For 75 years, blind business managers have successfully operated food services and commercial ventures at Federal, State, and private buildings and locations nationwide. We honor and celebrate this program's historic achievements. We also trust that the Randolph-Sheppard Program will continue to be a leading model for providing high-quality entrepreneurial opportunities for blind individuals. From a simple snack shop, to tourist services at the Hoover Dam, to full food-services operations at military installations, blind entrepreneurs have provided exceptional customer service to Federal and State employees, the Armed Forces, and the general public. With proven ability, they have challenged preconceived notions about disability.

The Randolph-Sheppard Act (20 U.S.C. 107 *et seq.*) created the Vending Facility Program requiring qualified blind individuals be given a priority to operate vending facilities on Federal properties. This program is responsible today for providing entrepreneurial opportunities for over 2,500 individuals who are blind. In turn, these business managers have hired thousands of workers, many of whom are individuals with disabilities. Every American, including persons with disabilities, deserves the opportunity to succeed without limits, earn equal pay for equal jobs, and aspire to full-time, career-oriented employment.

Continued support and cooperation are needed from executive departments, agencies, and offices (agencies) to extend the Randolph-Sheppard priority to qualified blind managers through the State licensing agencies that implement the program. Therefore, I direct all agencies that have property management responsibilities to ensure that agency officials, when pursuing the establishment and operation of vending facilities (including cafeterias and military dining facilities) as defined in 20 U.S.C. 107e, issue permits and contracts in compliance with the Randolph-Sheppard Program and consistent with existing regulations and law. I further direct the Secretary of Education, through the Commissioner of the Rehabilitation Services Administration, to submit a report to the President on agencies' implementation of the Randolph-Sheppard Program not later than 1 year from the date of this memorandum.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

The Secretary of Education is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 20, 2012

[FR Doc. 2012–1750
Filed 1–24–12; 11:15 am]
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H.R. 1540/P.L. 112–81

National Defense Authorization Act for Fiscal Year 2012 (Dec. 31, 2011; 125 Stat. 1298)

H.R. 515/P.L. 112–82

Belarus Democracy and Human Rights Act of 2011 (Jan. 3, 2012; 125 Stat. 1863)

H.R. 789/P.L. 112–83

To designate the facility of the United States Postal Service located at 20 Main Street in Little Ferry, New Jersey, as the "Sergeant Matthew J. Fenton Post Office". (Jan. 3, 2012; 125 Stat. 1869)

H.R. 1059/P.L. 112–84

To protect the safety of judges by extending the authority of the Judicial Conference to redact sensitive information contained in their financial disclosure reports, and for other purposes. (Jan. 3, 2012; 125 Stat. 1870)

H.R. 1264/P.L. 112–85

To designate the property between the United States Federal Courthouse and the Ed Jones Building located at 109 South Highland Avenue in Jackson, Tennessee, as the "M.D. Anderson Plaza" and to authorize the placement of a historical/identification marker on the grounds recognizing the achievements and philanthropy of M.S. Anderson. (Jan. 3, 2012; 125 Stat. 1871)

H.R. 1801/P.L. 112–86

Risk-Based Security Screening for Members of the Armed Forces Act (Jan. 3, 2012; 125 Stat. 1874)

H.R. 1892/P.L. 112–87

Intelligence Authorization Act for Fiscal Year 2012 (Jan. 3, 2012; 125 Stat. 1876)

H.R. 2056/P.L. 112–88

To instruct the Inspector General of the Federal Deposit Insurance Corporation to study the impact of insured depository institution failures, and for other purposes. (Jan. 3, 2012; 125 Stat. 1899)

H.R. 2422/P.L. 112–89

To designate the facility of the United States Postal Service located at 45 Bay Street, Suite 2, in Staten Island, New York, as the "Sergeant Angel Mendez Post Office". (Jan. 3, 2012; 125 Stat. 1903)

H.R. 2845/P.L. 112–90

Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011 (Jan. 3, 2012; 125 Stat. 1904)

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