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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0630; Airspace Docket No. 11–ASW–8]

Amendment of Class D Airspace; Altus AFB, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace for Altus AFB, OK. Procedural changes implemented to enhance safety for aircraft operating in the vicinity of Altus/Quartz Mountain Regional Airport, Altus, OK, has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at Altus AFB.

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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class D airspace for Altus AFB, OK (76 FR 66866) Docket No. FAA–2011–0630. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 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 Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class D airspace at Altus AFB, Altus, OK. Airspace reconfiguration is necessary due to procedural changes implemented to enhance safety for aircraft operating in the vicinity of Altus/Quartz Mountain Regional Airport. Controlled airspace is necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 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 controlled airspace for Altus AFB, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace

* * * * *

ASW OK D Altus AFB, OK [Amended]

Altus AFB, OK
(Lat. 34°39′59″ N., long. 99°16′05″ W.)
Altus AFB ILS Localizer
(Lat. 34°38′31′ N., long. 99°16′26″ W.)

That airspace extending upward from the surface to and including 3,900 feet MSL within a 6-mile radius of Altus AFB, and within 2 miles each side of the Altus AFB ILS 17R Localizer north course extending from the 6-mile radius to 7.6 miles north of the airport, and excluding that airspace below 2,500 feet MSL west of long. 99°18′52″ W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, Texas, on January 13, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–1800 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1146; Airspace Docket No. 11–ASO–36]

Amendment of Class E Airspace; Rockingham, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E Airspace at Rockingham, NC. The Roscoe Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approaches have been developed for Richmond County Airport. This action also updates the airport's geographic coordinates and notes the name change to Richmond County Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport.

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

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Rockingham, NC, (76 FR 66867) Docket No. FAA–2011–1146. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E airspace extending upward from 700 feet above the surface at Rockingham, NC, to accommodate new standard instrument approach procedures developed for Richmond County Airport. The Roscoe NDB has been decommissioned, and the NDB approach cancelled, making this modification necessary for the safety and management of IFR operations within the National Airspace System. The airport formerly named Rockingham-Hamlet Airport is changed to Richmond County Airport, and the geographic coordinates of the airport are adjusted to be in concert with the FAAs aeronautical database.

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, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. 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 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 controlled airspace Richmond County Airport, Rockingham, NC.

Lists 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 Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Rockingham, NC [AMENDED]

Richmond County Airport, NC
(Lat. 34°53′29″ N., long. 79°45′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Richmond County Airport.

Issued in College Park, Georgia, on January 18, 2012.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2012–1820 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0433; Airspace Docket No. 11–AGL–12]

Amendment of Class E Airspace; Rugby, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Rugby, ND. Decommissioning of the Rugby non-directional beacon (NDB) at Rugby Municipal Airport has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Rugby, ND, reconfiguring controlled airspace at Rugby Municipal Airport (76 FR 66870) Docket No. FAA–2011–0433. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Rugby, ND area. Decommissioning of the Rugby NDB and cancellation of the NDB approach at Rugby Municipal Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 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 controlled airspace at Rugby Municipal Airport, Rugby, ND.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL ND E5 Rugby, ND [Amended]

Rugby Municipal Airport, ND
(Lat. 48°23′25″ N., long. 100°01′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Rugby Municipal Airport; and that airspace extending upward from 1,200 feet above the surface within a 13-mile radius of the Rugby Municipal Airport and within 8.1 miles north and 4.2 miles south of the 115° bearing from the airport extending from the 13-mile radius to 16.1 miles east of the airport, and within 8.5 miles south and 3.8 miles north of the 314° bearing from the airport extending from the 13-mile radius to 16.1 miles northwest of the airport, excluding that airspace within the Minot, ND, and Rolla, ND, Class E airspace areas, and excluding all Federal Airways.

Issued in Fort Worth, Texas, on January 13, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–1786 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0846; Airspace Docket No. 11–ACE–18]

Amendment of Class E Airspace; Greenfield, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Greenfield, IA. Decommissioning of the Greenfield non-directional beacon (NDB) at Greenfield Municipal Airport, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Greenfield, IA, reconfiguring controlled airspace at Greenfield Municipal Airport (76 FR 53356) Docket No. FAA–2011–0846. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Greenfield, IA area. Decommissioning of the Greenfield NDB and cancellation of the NDB approach at Greenfield Municipal Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 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 controlled airspace at Greenfield Municipal Airport, Greenfield, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE IA E5 Greenfield, IA [Amended]

Greenfield Municipal Airport, IA
(Lat. 41°19′38″ N., long. 94°26′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Greenfield Municipal Airport.

Issued in Fort Worth, Texas, on January 13, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–1791 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0850; Airspace Docket No. 11–AGL–17]

Amendment of Class E Airspace; Portsmouth, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Portsmouth, OH. Decommissioning of the Portsmouth non-directional beacon (NDB) at Greater Portsmouth Regional Airport has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. The geographic coordinates of the airport also are updated.

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: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On October 28, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Portsmouth, OH, reconfiguring controlled airspace at Greater Portsmouth Regional Airport (76 FR 66869) Docket No. FAA–2011–0850. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Portsmouth, OH area. Decommissioning of the Portsmouth NDB and cancellation of the NDB approach at Greater Portsmouth Regional Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also updated to coincide with the FAA's aeronautical database.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 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 controlled airspace at Greater Portsmouth Regional Airport, Portsmouth, OH.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

AGL OH E5 Portsmouth, OH [Amended]

Greater Portsmouth Regional Airport, OH
(Lat. 38°50′26″ N., long. 82°50′50″ W.)
Portsmouth, Southern Ohio Medical Center Helipad, OH Point in Space Coordinates
(Lat. 38°45′05″ N., long. 83°00′19″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Greater Portsmouth Regional Airport, and within a 6-mile radius of the Point in Space serving Southern Ohio Medical Center Helipad.

Issued in Fort Worth, Texas, on January 13, 2012.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2012–1793 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

[SATS No. NM–048–FOR; Docket ID OSM–2010–0014]

New Mexico Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the New Mexico regulatory program (the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). New Mexico proposed non-substantive editorial revisions to its rules; substantive revisions and additions to rules concerning ownership and control; and substantive revisions to one rule about retention of sedimentation ponds. New Mexico revised its program to be consistent with the corresponding Federal regulations and to clarify ambiguities.

DATES: *Effective Date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Kenneth Walker, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, CO 80202, Telephone: (303) 293–5012. Internet: *kwalker@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the New Mexico Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the New Mexico program on December 31, 1980. You can find background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and conditions of approval in the December 31, 1980, **Federal Register** (45 FR 86459). You can also find later actions concerning New Mexico's program and program amendments at 30 CFR 931.10, 931.11, 931.13, 931.15, 931.16, and 931.30.

II. Submission of the Proposed Amendment

By letter dated September 1, 2010, New Mexico submitted an amendment to its program (SATS No. NM–048–FOR, Docket ID OSM–2010–0014–0007) under SMCRA (30 U.S.C. 1201 *et seq.*). New Mexico sent the amendment (1) in response to a September 3, 2009, OSM letter (Docket ID OSM–2010–0014–0003), concerning our ownership and control regulations, consistent with 30 CFR 732.17(c); and (2) to include proposed program changes made at its own initiative.

We announced receipt of the proposed amendment in the January 25, 2011, **Federal Register** (76 FR 4266). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Docket ID OSM–2010–0014–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 24, 2011. We received two Federal agency comment letters.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Minor Revisions to New Mexico's Rules

New Mexico proposed minor wording, editorial, punctuation, and grammatical changes to the following previously-approved rules.

19.8.11.1105.E NMAC (30 CFR 774.11(a)(1)), Review of Permit Applications;

19.8.11.1114 NMAC (30 CFR Part 773.17), Conformance of Permit;

19.8.30.3003.D NMAC (30 CFR 843.14(c)), Service of Notices of Violation and Cessation Orders;
19.8.30.3004.D NMAC (30 CFR 843.15), Informal Hearings;
19.8.31.3103.A NMAC (30 CFR 845.15(a)), Assessment of Separate Violation for Each Day;
19.8.34.3402.F(1) and (2) NMAC (30 CFR 702.11(f)(1) and (2)), Application Requirements and Procedures;
19.8.34.3408.C(2) and (3) NMAC (30 CFR 702.17(c)(2) and (3)), Revocation and Enforcement; and
19.8.35.13 NMAC (30 CFR 761.16(f)), Administrative and Judicial Review of a Valid Existing Rights Determination.

Because these changes are minor non-substantive editorial revisions, we find that they will not make New Mexico's rules less effective than the corresponding Federal regulations and we approve them.

B. Revisions to New Mexico's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

New Mexico proposed additions of or revisions to the following rules concerning ownership and control which contain language that is the same as or similar to the corresponding sections of the Federal regulations.

19.8.11.1120.A through C NMAC (30 CFR 774.12(a) through (c)), Addition of Rules Concerning Post-Permit Issuance Information Requirements for Permittees,
19.8.11.1121.A through D NMAC (30 CFR 778.9(a), (b), (c) and (d)), Addition of Rules Concerning Certifying and Updating Existing Permit Application Information, and
19.8.31.3113.A through C NMAC (30 CFR 847.11(a), (b) and (c)), Addition of Rules Concerning Criminal Penalties.

Because these proposed rules contain language that is the same as or similar to the corresponding Federal regulations, we find that they are no less effective than the corresponding Federal regulations, and we approve them.

C. Revisions to New Mexico's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. *Ownership and Control.* New Mexico submitted revisions of the following rules concerning ownership and control. OSM discusses below all proposed rules which New Mexico proposed to modify so that its program would be no less effective than the counterpart Federal regulations concerning ownership and control, including those rules which provide the authority in the New Mexico program to take enforcement actions against those found to be in positions of ownership and control.

a. *19.8.1.7.K NMAC, Definition of ''Knowing and Knowingly'' and 19.8.1.7.W(2) NMAC, Definition of ''Willful and Willfully'' and deletion of the Definition for ''Willful Violation.''* New Mexico proposed new definitions of ''knowing and knowingly'' and ''willful and willfully'' at, 19.8.1.7.K NMAC and 19.8.1.7.W(2) NMAC, that are identical to the same counterpart Federal definitions at 30 CFR 701.5. New Mexico proposed inclusion of these definitions in the New Mexico program such that these terms are defined for their use throughout the New Mexico program.

New Mexico also proposed to delete the definition of ''willful violation'' at 19.8.1.7.W(2) NMAC; there exists no counterpart Federal program definition.

For these reasons, the Director finds that New Mexico's proposed addition of the definitions for ''knowing and knowingly'' and ''willful and willfully'' at 19.8.1.7.K and 19.8.1.7.W(2) NMAC and proposed deletion of the definition for ''willful violation'' at 19.8.1.7.W(2) NMAC are consistent with and no less effective than the counterpart Federal definitions of ''knowing and knowingly'' and ''willful and willfully'' at 30 CFR 701.5.

b. *19.8.1.7.O(8)(a) and (b) NMAC, Definition of ''Owned or Controlled and Owns or Controls.''* New Mexico's proposed definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(a) and (b) NMAC includes counterpart language to two of OSM's Federal definitions at 30 CFR 701.5, the definitions for ''control or controller'' and ''own, owner, or ownership.''

New Mexico proposed a revision of its definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(a) NMAC that is, with one exception, substantively the same as the Federal definition of ''control or controller'' at 30 CFR 701.5. The exception is that, at 19.8.1.7.O(8)(a) NMAC, New Mexico does not include the operator as a controller in the language. However, in the definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(b)(ii) NMAC, New Mexico does include an operator as a presumed controller.

New Mexico proposed revisions of its definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(b)(iv) through (viii) NMAC, which are, with one exception, substantively the same as the counterpart Federal definition of ''Own, owner, or ownership'' at 30 CFR 701.5. The exception is that, at 19.8.1.7.O(8)(b)(vii) NMAC, New Mexico proposes that ownership be based on owning of record 10 percent or more of the entity, while OSM, in the Federal definition, provides for ownership based on possessing or controlling in excess of 50 percent of the voting securities or other instruments of ownership of an entity. In this respect, New Mexico's definition is more stringent than the Federal definition; however, it is no less effective than the Federal definition in identifying ownership.

New Mexico's existing definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(b) NMAC provides that a person, who is identified as an owner, the opportunity to demonstrate that he/she does not in fact have the authority directly or indirectly to determine the manner in which the relevant surface coal mining operation is conducted. In addition, New Mexico's existing rules at 19.8.11.1102 NMAC, 19.8.11.1117 NMAC, and 19.8.11.1118 NMAC are no less effective than the Federal regulations at 30 CFR 773.25, 30 CFR 773.26, and 30 CFR 773.27 in allowing for challenges to ownership or control findings.

For these reasons, the Director finds that New Mexico's proposed definition of ''owned or controlled and owns or controls'' at 19.8.1.7.O(8)(a) and (b) NMAC is no less effective than the counterpart Federal definitions of ''control or controller'' and ''own, owner, or ownership'' at 30 CFR 701.5, and approves it.

c. *19.8.7.701.C(3) NMAC, Identification of Interests.* New Mexico proposed to revise 19.8.7.701.C(3) NMAC to require that a permit application contain, among other things, information specific to the identification of persons whose identification is required by 19.8.11.1120.C NMAC, rather than 19.8.11.1113.D.

New Mexico's proposed 19.8.11.1120 NMAC, concerning post-permit issuance information requirements for permittees, as discussed above, is substantively identical to the counterpart Federal regulations at 30 CFR 774.12(a) through (c). The previously referenced rule at 19.8.11.1113.D NMAC does not exist in New Mexico's program; furthermore, New Mexico's existing rules at 19.8.11.1113 NMAC pertain to conditions of a permit affecting environment, public health and safety, not ownership and control information.

Therefore, New Mexico's proposed revision of 19.8.7.701.C(3) NMAC to

reference 19.8.11.1120.C NMAC, ensures that a permit application will contain the most recent information pertaining to ownership and control and eliminates confusion by deleting an inappropriately referenced rule that has nothing to do with applicant ownership and control information.

New Mexico also proposed to revise 19.8.7.701(C) NMAC to require the submission of telephone numbers for persons who own or control the applicant according to the definitions of ''owned or controlled and owns or controls'' at 19.8.1.107.O NMAC. As discussed above, the Director finds that New Mexico's proposed definition of ''owned or controlled and owns or controls'' at 19.8.1.107.O NMAC is no less effective than the counterpart definitions of ''control or controller'' and ''own, owner, or ownership'' at 30 CFR 701.5. New Mexico's proposed revision to require submission of telephone numbers is consistent with the requirement in the Federal regulations at 30 CFR 778.11(d). For any change in persons identified, the Federal regulations under 30 CFR 774.12(c)(1) and by 30 CFR 778.11(d) requires, among other things, a telephone number.

For these reasons, the Director finds that New Mexico's proposed revisions of 19.8.7.701.C(3) NMAC are no less effective than the counterpart Federal regulations at 30 CFR 774.12(a) through (c) and 30 CFR 778.11(d), and approves them.

d. *19.8.11.1105.F NMAC, Review of Permit Applications for Permit Eligibility.* New Mexico proposed revising 19.8.11.1105.F NMAC by adding the requirement for the Director of the New Mexico program, after an applicant's completion of the reporting required by 19.8.7.702 NMAC, to request, no more than five business days before permit issuance, a compliance history report from the applicant violator system (AVS) and make that report part of the AVS record review required by New Mexico's rule at 19.8.11.1116 NMAC. New Mexico's rule at 19.8.7.702.D NMAC requires, after an applicant is notified that his or her application is approved, but before the permit is issued, an applicant to either update the information, concerning compliance information, previously submitted or indicate that no change has occurred in the information. New Mexico's rule at 19.8.11.116 requires, among other things, that New Mexico must review all reasonably available information concerning violation notices and ownership or control links to determine whether the application can be approved.

Because New Mexico has revised its rule at 19.8.11.1105.F NMAC, concerning a final compliance review for all permit applications, with references to the reporting requirements of 19.8.7.702.D NMAC and the AVS record review for permit eligibility required by 19.8.11.1116 NMAC, the Director finds that New Mexico's proposed 19.8.11.1105.F NMAC is no less effective in making the permit eligibility determination required by 30 CFR 773.12, and approves it.

The Director notes that New Mexico's 19.8.11.1116.B NMAC, of which New Mexico proposed no revision, requires New Mexico to deny approval of an application if the review conducted discloses any ownership or control link between the applicant and any person cited in a violation notice unless certain actions have been taken (which are specified in 19.8.11.1116.B NMAC). Under the counterpart Federal regulation at 30 CFR 773.12(a), permits may be denied only if an applicant directly (one level down) owns or controls, or if the applicant or operator indirectly controls an entity with an unabated or uncorrected (''outstanding'') violation if the control and the violation occurred after November 2, 1988. In this respect, New Mexico's proposed rule at 19.8.11.1105.F NMAC is more stringent, but no less effective than, the counterpart Federal regulation at 30 CFR 773.12(a).

e. *19.8.11.1119.A through H NMAC, Post-Permit Issuance Requirements and Other Actions.* New Mexico proposed additional rules at 19.8.11.1119.A through H NMAC, concerning post-permit issuance requirements and other actions based on ownership, control, and violation information, that are, with one exception, substantively identical to the counterpart Federal regulations at 30 CFR 774.11(a) through (h). The exception is that New Mexico's proposed rule at 19.8.11.1119.C NMAC is more stringent than the counterpart Federal regulation at 30 CFR 774.11(c), in that the referenced rule at 19.8.11.1116 NMAC, as discussed above, allows for any ownership or control link between the applicant and any person cited in a violation notice to cause finding of permanent permit ineligibility rather than the more limited ownership and control link provided for the Federal regulation referenced at 30 CFR 773.12(a). The proposed New Mexico rules need only meet the minimum requirements of the counterpart Federal regulations; New Mexico may elect to be more stringent.

For this reason, the Director finds that New Mexico's proposed 19.8.11.1119.A through H NMAC are no less effective than the counterpart 30 CFR 774.11(a) through (h), and approves them.

f. *19.8.30.3000.L NMAC, Cessation Orders.* New Mexico proposed to revise 19.8.30.3000.L NMAC, concerning persons who must receive New Mexico's written notification of issuance of a cessation order, to require that the notice be sent to any person who has been identified under 19.8.11.1119.F NMAC, rather than 19.8.11.1113.D NMAC. New Mexico's referenced rule at 19.8.11.1119.F specifies, among other things, that New Mexico may, at any time, identify any person who owns or controls all or part of a surface coal mining operation.

New Mexico's proposed rule at 19.8.30.3000.L NMAC also requires that persons identified in 19.8.7.701.C NMAC and 19.8.7.701.D NMAC as owning or controlling the permittee receive the same written notification of the issuance of a cessation order; New Mexico has proposed no revision of these rules. Referenced 19.8.7.701.C NMAC specifies information required to be in a permit application, including a list of outstanding violation notices received prior to the date of the application by any surface coal mining operation that is owned or controlled by either the applicant or any person who owns or controls the applicant under the definition of ''owned or controlled and owns or controls'' at 19.8.1.107.O NMAC. Referenced 19.8.7.702.D NMAC requires, after an applicant is notified that his or her application is approved, but before the permit is issued, an applicant to either update the information, concerning compliance information, previously submitted or indicate that no change has occurred in the information.

The counterpart Federal regulation to New Mexico's referenced 19.8.11.3000.L NMAC is 30 CFR 843.11(g), which requires that the Director notify in writing persons identified as an owner or controller of the operation, as defined at 30 CFR 701.5, that a cessation order has been issued.

As discussed above, 19.8.11.1113.D NMAC does not exist in New Mexico's program and New Mexico's existing rules at 19.8.11.1113.A through C pertain to conditions of permit affecting environment, public health and safety (not ownership and control information). Also as discussed above, the Director finds that New Mexico's proposed rules at 19.8.11.1119.A through H NMAC are substantively identical to and no less effective than the counterpart 30 CFR 777.11(a) through (h). In addition, as discussed above, New Mexico's proposed

definition of ''owned or controlled and owns or controls'' at 19.8.1.107.O NMAC is no less effective than the counterpart definitions of ''control or controller'' and ''own, owner, or ownership'' at 30 CFR 701.5.

For these reasons, the Director finds that New Mexico's proposed revision at 19.8.30.3000.L NMAC causes proposed 19.8.30.3000.L to be no less effective than the counterpart Federal regulation at 30 CFR 843.11(g), in that the proposed reference to 19.8.11.1119.F NMAC will ensure that all people listed as owners or controllers will receive a written notification of the issuance of a cessation order. The Director approves proposed 19.8.30.3000.L NMAC.

g. *19.8.31.3109.A NMAC, Individual Civil Penalties.* New Mexico proposed revision of 19.8.31.3109.A NMAC to clarify when the Director of the New Mexico program may assess an individual civil penalty; i.e., the Director may assess an individual civil penalty against any corporate director, officer, or agent of a corporate permittee who knowingly and willfully authorized, ordered, or carried out a violation of a permit condition, or a failure or refusal to comply with any order issued under the act. New Mexico proposed this clarification because New Mexico proposed deletion of definition of ''willful violation'' at 19.8.1.7.W(2) NMAC.

The counterpart Federal regulation at 30 CFR 846.12(a) provides that OSM may assess an individual civil penalty against any corporate director, officer, or agent to a corporate permitttee who knowingly and willfully authorized, ordered, or carried out a violation, failure, or refusal.

New Mexico's proposed rule at 19.8.31.3109.A NMAC is substantively the same as the counterpart Federal regulation at 30 CFR 846.12(a), concerning individual civil penalties. New Mexico's proposed rule differs only in that it provides clarification of the phrase 'a violation, failure or refusal' as used in the counterpart Federal regulation.

For these reasons, the Director finds that New Mexico's proposed revision of 19.8.31.3109.A NMAC is no less effective than the counterpart Federal regulation at 30 CFR 846.12(a), concerning individual civil penalties, and approves it.

h. *19.8.31.3109.A(1), (2) and (3) NMAC, Deletion of definitions of ''knowingly'', ''willfully'', and ''violation, failure or refusal.''* At 19.8.31.3109.A(1), (2), and (3) NMAC, New Mexico proposed to delete the definitions of ''knowingly,'' ''willfully,'' and ''violation, failure or refusal''.

As discussed above, in finding number C.1.a, New Mexico proposed new definitions of ''knowing and knowingly'' and ''willful and willfully'' at, respectively, 19.8.1.7.K NMAC and 19.8.1.7.W(2) NMAC, that are (1) identical to the same counterpart Federal definitions at 30 CFR 701.5 and (2) defined for their use throughout the New Mexico program. New Mexico's definitions of ''knowingly'', ''willfully'', and ''violation, failure or refusal'' have no counterpart in the Federal program and were applicable only to rules concerning individual civil penalties in New Mexico's program.

Therefore, the Director finds that New Mexico's proposed deletion, at 19.8.31.3109.A(1), (2), and (3) NMAC, of the definitions of ''knowingly,'' ''willfully,'' and ''violation, failure or refusal'' is consistent with New Mexico's proposed definitions of ''knowing and knowingly'' and ''willful and willfully,'' and no less effective than the counterpart Federal definitions of ''knowing and knowingly'' and ''willful and willfully'' at 30 CFR 701.5. The Director approves New Mexico's proposed deletions of these terms.

2. *19.8.20.2010.A(2) NMAC, Sediment Control Measures and Water Quality Standards and Effluent Limitations.* New Mexico proposes to delete 19.8.20.2010.A(2)(a) and (b) NMAC pertaining to the maintenance of sedimentation ponds.

19.8.20.2010.A(2)(a) NMAC. New Mexico proposed to delete a provision at paragraph (2)(a) which requires that sedimentation ponds be retained to prevent gully erosion from occurring. New Mexico's existing rule at paragraph (2) requires, among other things, that sediment ponds be maintained until erosion on the regraded area has been controlled. The requirement in paragraph (2), to retain sediment ponds until erosion has been controlled, achieves the same purpose in the deleted provision at (2)(a). Therefore, New Mexico's proposal to delete the provision at 19.8.20.2010.A(2)(a) NMAC, is not necessary in New Mexico's program to ensure the appropriate use of sedimentation ponds.

19.8.20.2010.A(2)(b) NMAC. This provision, proposed for deletion, requires maintenance of sedimentation ponds to insure that the quality of the untreated drainage from the disturbed area meets the applicable State and Federal water quality standard requirements for the receiving stream, except during precipitation events which are equal to or greater than the 2-year recurrence interval. New Mexico explained that the provision proposed for deletion at 19.8.20.2010.A(2)(b) NMAC, contradicts New Mexico's rule at 19.8.20.2010.B(1) NMAC, which provides for discharges from disturbed areas to exceed the effluent limitations of 19.8.20 NMAC, if the discharge (1) resulted from a precipitation event equal to or larger than a 10-year 24-hour precipitation event and (2) is from facilities designed, constructed, and maintained in accordance with the requirements of 19.8.20 NMAC.

In addition, New Mexico's existing rule at 19.8.20.2010.C NMAC requires, among other things, that a permittee must install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area so that it complies with all Federal and State laws and regulations and the limitations of 19.8.20 NMAC.

Therefore, New Mexico's proposed deletion of 19.8.20.2010.A(2)(a) and (b) NMAC clarifies their program by removing language that is either contradictory of existing requirements at 19.8.20.2010.B(1) NMAC, or repetitive of existing requirements at 19.8.20.2010.C NMAC.

The Federal counterparts to New Mexico's rules proposed for deletion at 19.8.20.2010.A(2)(a) and (b) NMAC are found at 30 CFR 816.42 and 30 CFR 816.45(a)(2). The counterpart Federal regulations at 30 CFR 816.42 require that discharges of water from areas disturbed by surface mining activities shall be made in compliance with all applicable State and Federal water quality laws and regulations and with the effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434. The Federal regulations at 40 CFR Part 434, similar to those in the New Mexico program, provide for exemptions from the requirement to meet effluent standards. The counterpart Federal regulations at 30 CFR 816.45(a)(2) require appropriate sediment control measures be maintained to, among other things, meet the more stringent of applicable State or Federal effluent limitations.

OSM finds that New Mexico's proposed deletion of 19.8.20.2010.A(2)(a) and (b) NMAC, in conjunction with New Mexico's existing rules at 19.8.20.2010.A(1), A(2), B(1), and C NMAC, is consistent with and no less effective than the requirements of the Federal regulations at 30 CFR 816.42, concerning the need for runoff from disturbed areas to meet applicable water quality effluent standards, and 30 CFR 816.45(a)(2), concerning the requirement for adequate sediment control measures. The Director approves proposed rule 19.8.20.2010.A.2 NMAC.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Docket ID Nos. OSM–2010–0014–0001 and OSM–2010–0014–0008), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the New Mexico program (Docket ID No. OSM–2010–0014–0008). We received two comment letters. We received one comment letter from the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), dated February 24, 2011 (Docket ID No. OSM–2010–0014–0009). The NRCS stated that they had no comments on the proposed rulemaking. We received one emailed comment from the U.S. Department of Energy (DOE), dated March 15, 2011 (Docket ID No. OSM–2010–0014–0010). The DOE stated that they had no comments on the proposed rulemaking.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to obtain concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that New Mexico proposed to make in this amendment pertains to setting air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, under 30 CFR 732.17(h)(11)(i), OSM requested comments on the amendment from EPA (Docket ID No. OSM–2010–0014–0008). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Although the revisions that New Mexico proposed to make in this amendment would not have effects on historic properties, on January 25, 2011, we nonetheless requested comments from the SHPO and ACHP on New Mexico's amendment (Docket ID No. OSM–2010–0014–0008). However, we did not receive responses from the SHPO or ACHP.

V. OSM's Decision

Based on the above findings, we approve New Mexico's September 1, 2010, amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 931, which codify decisions concerning the New Mexico program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq.*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded Mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 18, 2011.

Allen D. Klein,

Director, Western Region.

Editorial Note: This document was received at the Office of the Federal Register on January 25, 2012.

For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—NEW MEXICO

■ 1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 931.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
September 1, 2010	January 30, 2012	19 NMAC 8.1.7.K; 8.1.7.O(8)(a) and (b); 8.1.7.W(2)(a) and (b); 8.7.701.C(3); 8.11.1105.E; 8.11.1105.F; 8.11.1114; 8.11.1119.A through H; 8.11.1120.A through C; 8.11.1121.A through D; 8.20.2010.A(2)(a) and (b) (deletion); 8.30.3000.L; 8.30.3003.D; 8.30.3004.D; 8.31.3103.A; 8.31.3109.A; 8.31.3109.A(1) through (3) (deletion); 8.31.3113.A, B, and C; 8.34.3402.F(1) and (2); 8.34.3408.C(2) and (3); and 8.35.13.

[FR Doc. 2012–1956 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS ANCHORAGE (LPD 23) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective January 30, 2012 and is applicable beginning January 16, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS ANCHORAGE (LPD 23) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(a)(i) and (b)(i), pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k) as described in Rule 30(a)(i), pertaining to the vertical separation between anchor lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS ANCHORAGE (LPD 23); and

■ B. In Table Four by adding, in alpha numerical order, by vessel number, and entry for USS ANCHORAGE (LPD 23); and

■ C. In Table Five by adding, in alpha numerical order, by vessel number, and entry for USS ANCHORAGE (LPD 23).

§706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(k) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(k) Annex 1
*	*	*		*	*	*	*	
USS ANCHORAGE	LPD 23							1.19 below
*	*	*		*	*	*	*	

* * * * *

TABLE FOUR

Vessel	Number	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
*	*	*
USS ANCHORAGE	LPD 23	10
*	*	*

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS ANCHORAGE	LPD 23			X	71
*	*	*	*	*	*

Approved: January 16, 2012.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: January 23, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–1900 Filed 1–27–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS ARLINGTON (LPD 24) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective January 30, 2012 and is applicable beginning January 16, 2012.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jaewon Choi, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS ARLINGTON (LPD 24) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(a)(i) and (b)(i), pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k) as described in Rule 30(a)(i), pertaining to the vertical separation between anchor lights. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ A. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS ARLINGTON (LPD 24); and

■ B. In Table Four by adding, in alpha numerical order, by vessel number, and entry for USS ARLINGTON (LPD 24); and

■ C. In Table Five by adding, in alpha numerical order, by vessel number, and entry for USS ARLINGTON (LPD 24).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(k) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(k) Annex 1
*	*	*	*	*	*	*	*	
USS ARLINGTON	LPD 24							1.62 below
*	*	*	*	*	*	*	*	

* * * * *

TABLE FOUR

Vessel	Number	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
* * *	* * *	*
USS ARLINGTON	LPD 24	10
* * *	* * *	*

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*		*	*
USS ARLINGTON	LPD 24			X	71
* * *	*	*		*	*

Approved: January 16, 2012.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General, Admiralty and Maritime Law.

Dated: January 23, 2012.

J.M. Beal,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–1897 Filed 1–27–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AN28

Dental Conditions

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) adopts as a final rule the proposal to amend its adjudication regulations regarding service connection of dental conditions for treatment purposes. This amendment clarifies that principles governing determinations by VA's Veterans Benefits Administration (VBA) for service connection of dental conditions for the purpose of establishing eligibility for dental treatment by VA's Veterans Health Administration (VHA), apply only when VHA requests information or a rating from VBA for those purposes. This amendment also clarifies existing regulatory provisions and reflects the respective responsibilities of VHA and VBA in determinations concerning eligibility for dental treatment.

DATES: *Effective Date:* This amendment is effective February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Arlene George, M.D., MPH, Regulations Staff (211D), Compensation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on March 17, 2011 (76 FR 14600), VA proposed to amend 38 CFR 3.381, which identifies some of the circumstances under which dental conditions that may not qualify as disabilities for purposes of VA disability compensation may nevertheless be service connected for purposes of VA dental treatment under 38 U.S.C. 1712 and 38 CFR 17.161; clarifies existing regulatory provisions; and reflects the respective responsibilities of VHA and VBA in determinations concerning eligibility for dental treatment. We proposed redesignation of paragraphs (a) through (f) as paragraphs (b) through (g) and the addition of new paragraph (a) that explains the situations when VHA will refer a claim to VBA. We also proposed to amend redesignated paragraph (b) to clarify what conditions will be service connected for treatment purposes. Additionally, we proposed removal of the following sentence from redesignated paragraph (c): ''When applicable, the rating activity will determine whether the condition is due to combat or other in-service trauma, or whether the Veteran was interned as a prisoner of war.'' This sentence is being removed because it is repetitive of portions of paragraph (a).

Interested persons were invited to submit written comments to VA on or before May 16, 2011. In response to the proposed rule, VA received four (4) public comments. Of these comments, two were beyond the scope of the rulemaking: One involved comprehensive dental care for children of Vietnam veterans born with spina bifida and the other suggested revision of the criteria for service personnel to obtain dental care. Therefore, no changes were made based on these comments.

Of the two remaining comments, one was two-fold. The commenter expressed concerns about the procedure for timely processing Class 5 rating requests; this is beyond the scope of this rulemaking, which addresses only the circumstances under which VBA will make adjudicatory determinations needed by VHA to determine eligibility for dental care. The commenter also suggested that the language of the proposed rule pertaining to Class 6 eligibility is ''vague and open to broader interpretation than the examples provided.'' This comment also exceeds the scope of this rulemaking. In providing background information on the various circumstances in which VHA provides dental care to veterans, the preamble to the proposed rule notice referred to veterans ''[w]ho are scheduled for admission or otherwise receiving care under 38 U.S.C. chapter 17 if dental care is reasonably necessary to the provision of such care and services'' and listed as ''examples'' several types of surgery for which dental care may be necessary to minimize the risk of complications due to infection from dental conditions. The examples provided are not intended to be an exhaustive list, but rather merely examples of medical conditions commonly associated with greater health risks when combined with poor dentition. The preamble language is reflective of 38 CFR 17.161, which sets forth the criteria concerning eligibility for treatment and which we did not propose to revise. To the extent the commenter suggests that we revise such criteria, the comment is beyond the scope of this rulemaking. No changes were made based on this comment.

The fourth commenter suggested VA broaden the scope of the determinations listed in the proposed rule for greater consistency with 38 U.S.C 1712 and 38 CFR 17.161(i) and (j). The intent of the proposed rule is not to reiterate all potential bases for eligibility for dental treatment listed in 38 U.S.C 1712(a)(1)(A)–(H) and 38 CFR 17.161(i) and (j), but to clarify VBA's role in making determinations on such matters. Further, the phrase ''include, but is not limited to'' indicates that the matters listed were intended as examples rather than an exclusive list. Thus, the matters referenced in 38 U.S.C 1712 and 38 CFR 17.161(i) and (j) are not excluded. Therefore, no changes were made based on this comment.

Based on the rationale set forth in the preamble to the proposed rule and in this preamble, VA is adopting the proposed rule as a final rule without changes.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would not affect any small entities. Only certain VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) classifies a ''significant regulatory action,'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as any regulatory action 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.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this rule are 64.011, Veterans Dental Care; and 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 6, 2011, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Radioactive materials, Veterans, Vietnam.

Dated: January 24, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.381 by:
■ a. Redesignating paragraphs (a) through (f) as paragraphs (b) through (g).
■ b. Adding new paragraph (a).
■ c. Revising newly redesignated paragraph (b).
■ d. Removing the last sentence from newly redesignated paragraph (c).

The addition and revision read as follows:

§ 3.381 Service connection of dental conditions for treatment purposes.

(a) The Veterans Benefits Administration (VBA) will adjudicate a claim for service connection of a dental condition for treatment purposes after the Veterans Health Administration determines a veteran meets the basic eligibility requirements of § 17.161 of this chapter and requests VBA make a determination on questions that include, but are not limited to, any of the following:

(1) Former Prisoner of War status;

(2) Whether the veteran has a compensable or noncompensable service-connected dental condition or disability;

(3) Whether the dental condition or disability is a result of combat wounds;

(4) Whether the dental condition or disability is a result of service trauma; or

(5) Whether the veteran is totally disabled due to a service-connected disability.

(b) Treatable carious teeth, replaceable missing teeth, dental or alveolar abscesses, and periodontal disease are not compensable disabilities, but may nevertheless be service connected solely for the purpose of establishing eligibility for outpatient dental treatment as provided for in § 17.161 of this chapter. These conditions and other dental conditions or disabilities that are noncompensably rated under § 4.150 of this chapter may be service connected for purposes of Class II or Class II (a) dental treatment under § 17.161 of this chapter.

* * * * *

[FR Doc. 2012–1873 Filed 1–27–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 39

RIN 2900–AN90

Tribal Veterans Cemetery Grants

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends the Department of Veterans Affairs (VA) regulations governing Federal grants for the establishment, expansion, and improvement of veterans cemeteries. This final rule implements through regulation new statutory authority to provide grants for the establishment, expansion, and improvement of Tribal Organization veterans cemeteries, as authorized by Section 403 of the ''Veterans Benefits, Health Care, and Information Technology Act of 2006'' (the Act). The Act requires VA to administer grants to Tribal Organizations in the same manner and under the same conditions as grants to States. This final rule makes non-substantive changes to the part heading of Part 39 and the name of the State Cemetery Grants Service to more accurately reflect that VA awards veteran cemetery grants to States and Tribal Organizations. The final rule establishes criteria to guide VA's decisions on granting Tribal Organization requests to obtain grants for establishing, expanding, and improving veterans cemeteries that are or will be owned and operated by a Tribal Organization. The final rule also expands VA's preapplication requirement to all veterans cemetery grants as a means to promote consistency and communication in the grant application process. Further, the final rule revises VA regulations to address structural differences between Tribal Organizations and States.

DATES: *Effective Date:* February 29, 2012. The incorporation by reference of certain publications listed in the rule was approved by the Director of the Federal Register as of July 16, 2010.

FOR FURTHER INFORMATION CONTACT: Contact Frank Salvas, Director of Veterans Cemetery Grants Service, National Cemetery Administration (41E), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: (202) 249–7396 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On May 19, 2011, VA published a notice of proposed rulemaking in the **Federal Register** (76 FR 28925), that proposed to amend regulations in 38 CFR part 39 governing Federal grants for the establishment, expansion, and improvement of veterans cemeteries and to implement through regulation new statutory authority to award grants to Tribal Organizations in the same manner and under the same conditions as awarded to States, as authorized by the Act (Pub. L. 109–461), enacted December 22, 2006. VA provided a 60-day comment period for the proposed rule that ended on July 18, 2011.

We received one comment which supported providing cemetery grants to Tribal Organizations in the same manner VA currently provides grants to States. The comment indicated that the process for Tribal Organizations to qualify for a grant should be no different than the process that States are currently required to follow. No change is required in the final rule to address this comment. As specified in the Act, grants to Tribal Organizations ''shall be made in the same manner, and under the same conditions, as grants to States.'' Public Law 109–461, § 403. Accordingly, Tribal Organization grants will be awarded in the same manner as VA currently provides grants to the States. The final rule adheres as closely as possible to the procedures and requirements for States to apply for cemetery grants. The final rule does not change the existing grant prioritization process and retains the same four priority groups as the current Part 39. Thus, in accordance with 38 U.S.C. 2408, Tribal Organizations will compete with States in the prioritization process. We note that since the publication of the proposed rule, the Veterans Cemetery Grants Service (VCGS) has awarded its first Veterans cemetery grant to a Tribal Organization for the establishment of a Tribal veterans cemetery.

Based on the rationale set forth in the proposed rule, and upon consideration of the public comment submission, we adopt the provisions of the proposed rule as a final rule, with minor non-substantive edits to the rule text to accurately reflect the wording and punctuation in the current 38 CFR part 39.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the 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 effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by the Office of Management and Budget (OMB), as ''any regulatory action 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 this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

Executive Order 13175

Executive Order 13175 provides that Federal agencies may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs on Tribal governments, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal Organizations or the Federal agency consults with Tribal officials early in the process of developing the proposed regulation and develops a Tribal summary impact statement. VA's cemetery grant program for Tribal Organizations is required by statute, which specifically provides that the grants shall be ''made in the same manner, and under the same conditions, as grants to States are made''. In addition, participation is voluntary and 100 percent of the development costs for an approved project are provided by VA. Thus, Executive Order 13175 requirements are not applicable. However, in the spirit of the Executive Order, VA has communicated with the Tribal Organizations regarding the proposed regulatory grant application process. On January 28, 2008, an informational letter was sent to each of the Federally-recognized Indian Tribes informing them that ''American Indian Tribal grants will be considered in the same manner as State veterans cemetery grants under the authority of title 38 Code of Federal Regulations (CFR) Part 39.'' Further, on February 22, 2008, a conference call took place between senior VA officials and representatives designated by Tribal leadership of Federally-recognized Tribes to discuss the grant application process. Senior NCA officials and representatives continue to meet with and communicate with Tribal Organizations that are interested in the grant program.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule has no significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The Secretary acknowledges that this final rule may affect some Tribal governments that may be considered small entities; however, the economic impact is not significant. This final rule imposes no mandatory requirements or costs on Tribal governments as a whole and only affects those that choose to apply for veterans cemetery grants. To the extent that small entities are affected, the impact of this amendment is both minimal and entirely beneficial. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any year. This final rule would have no such effect on State and local governments, or on the private sector. While the final rule may result in some expenditure by Tribal governments, the aggregate amount of such expenditures is estimated to be significantly less than $100 million.

Paperwork Reduction Act

This final rule requires Tribal Organizations to submit information to obtain grants under VA's Veterans Cemetery Grants Service. The collections of information referenced in this final rule have been approved by OMB and have been assigned OMB control numbers 0348–0002, 4040–0004, 4040–0008, 4040–0009, and 2900–0559 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance Number and Title

The Catalog of Federal Domestic Assistance program number and title for this final rule is 64.203, State Cemetery Grants.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 20, 2011, for publication.

List of Subjects in 38 CFR Part 39

Cemeteries, Incorporation by reference, Grants programs—Veterans, Veterans.

Dated: January 24, 2012.

Robert C. McFetridge,

Director of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, VA amends 38 CFR part 39 as follows:

PART 39—AID FOR THE ESTABLISHMENT, EXPANSION, AND IMPROVEMENT, OR OPERATION AND MAINTENANCE, OF VETERANS CEMETERIES

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

Authority: 25 U.S.C. 450b(l); 38 U.S.C. 101, 501, 2408, 2411, 3765.

■ 2. Revise part 39 heading as shown above.

■ 3. Revise § 39.1 to read as follows:

§ 39.1 Purpose.

This part sets forth the mechanism for a State or Tribal Organization to obtain a grant to establish, expand, or improve a veterans cemetery that meets VA's national shrine standards of appearance that is or will be owned by the State, or operated by a Tribal Organization on trust land, or to obtain a grant to operate or maintain a State or Tribal veterans cemetery to meet VA's national shrine standards of appearance.

(Authority: 38 U.S.C. 501, 2408)

■ 4. Revise § 39.2 to read as follows:

§ 39.2 Definitions.

For the purpose of this part:

Establishment means the process of site selection, land acquisition, design and planning, earth moving, landscaping, construction, and provision of initial operating equipment necessary to convert a tract of land to an operational veterans cemetery.

Establishment, Expansion, and Improvement Project means an undertaking to establish, expand, or improve a site for use as a State or Tribal veterans cemetery.

Expansion means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other facilities, such as committal service shelters, crypts (preplaced grave liners), and columbaria, necessary for the functioning of a cemetery.

Improvement means the enhancement of a cemetery through landscaping, construction, or renovation of cemetery

infrastructure, such as building expansion and upgrades to roads and irrigation systems that is not directly related to the development of new gravesites: nonrecurring maintenance; and the addition of other features appropriate to cemeteries.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or Regional or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Operation and Maintenance Project means a project that assists a State or Tribal Organization to achieve VA's national shrine standards of appearance in the key cemetery operational areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions.

Secretary means the Secretary of the United States Department of Veterans Affairs.

State means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Tribal Organization means:

(1) The recognized governing body of any Indian Tribe;

(2) Any legally established organization of Indians that is controlled, sanctioned, or chartered by such governing body or is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities;

(3) The Department of Hawaiian Homelands; and

(4) Such other organizations as the Secretary may prescribe.

Trust land means any land that:

(1) Is held in trust by the United States for Native Americans;

(2) Is subject to restrictions on alienation imposed by the United States on Indian lands, including native Hawaiian homelands;

(3) Is owned by a Regional Corporation or a Village Corporation as defined in 43 U.S.C. 1602(g) and (j); or

(4) Is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

VA means the United States Department of Veterans Affairs or the Veterans Cemetery Grants Service.

Veteran means a person who served in the active military, naval, or air service who died in line of duty while in service or was discharged or released under conditions other than dishonorable.

Veterans Cemetery Grants Service (VCGS) means the Veterans Cemetery Grants Service within VA's National Cemetery Administration.

(Authority: 25 U.S.C. 450b(l), 38 U.S.C. 101, 501, 2408, 3765)

■ 5. Revise § 39.4 to read as follows:

§ 39.4 Decision makers, notifications, and additional information.

Decisions required under this part will be made by the VA Director, Veterans Cemetery Grants Service (VCGS), National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide to affected States and Tribal Organizations written notice of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 501, 2408)

■ 6. Revise § 39.5 to read as follows:

§ 39.5 Submission of information and documents to VA.

All information and documents required to be submitted to VA must be submitted to the Director of the Veterans Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All forms cited in this part are available at *http://www.cem.va.gov/cem/scg_grants.asp*.

(Authority: 38 U.S.C. 501, 2408)

■ 7. Revise § 39.6 to read as follows:

§ 39.6 Amendments to grant application.

A State or Tribal Organization seeking to amend a grant application must submit revised Standard Forms 424 (Application for Federal Assistance) and 424C (Budget Information) with a narrative description of, and justification for, the amendment. Any amendment of an application that changes the scope of the application or increases the amount of the grant requested, whether or not the application has already been approved, shall be subject to approval by VA in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 4040–0004 and 4040–0008.)

■ 8. Revise § 39.7 to read as follows:

§ 39.7 Line item adjustment to grants.

After a grant has been awarded, upon request from the State or Tribal Organization representative, VA may approve a change in one or more line items (line items are identified in Standard Form 424C) of up to 10 percent (increase or decrease) of the cost of each line item if the change would be within the scope or objective of the project and the aggregate adjustments would not increase the total amount of the grant.

(Authority: 38 U.S.C. 501, 2408)

■ 9. Revise § 39.8 to read as follows:

§ 39.8 Withdrawal of grant application.

A State or Tribal Organization representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408)

■ 10. Amend § 39.10 by:

■ a. Revising paragraph (a).

■ b. Revising paragraph (b) introductory text.

■ c. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 39.10 Cemetery requirements and prohibitions and recapture provisions.

(a) In order to qualify for a grant, a State or Tribal veterans cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, unmarried adult children who were physically or mentally disabled and incapable of self-support, and eligible parents of certain deceased service members.

(b) Any grant under this part made on or after November 21, 1997, is made on the condition that, after the date of receipt of the grant, the State or Tribal Organization receiving the grant, subject to requirements for receipt of notice in 38 U.S.C. 2408 and 2411, will prohibit in the cemetery for which the grant is awarded the interment of the remains or the memorialization of any person:

* * * * *

(c) If a State or Tribal Organization which has received a grant under this part ceases to own the cemetery for which the grant was made, ceases to operate such cemetery as a veterans cemetery in accordance with paragraph (a) of this section, violates the prohibition in paragraph (b) of this section, or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State or Tribal Organization the total of all grants made to the State or Tribal Organization under this part in connection with such cemetery.

(d) If, within 3 years after VA has certified to the Department of the Treasury an approved grant application,

not all funds from the grant have been used by the State or Tribal Organization for the purpose for which the grant was made, the United States shall be entitled to recover any unused grant funds from the State or Tribal Organization.

* * * * *

■ 11. Revise § 39.11 to read as follows:

§ 39.11 State or Tribal Organization to retain control of operations.

Neither the Secretary nor any employee of VA shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State or Tribal veterans cemetery that receives a grant under this program except as prescribed in this part.

(Authority: 38 U.S.C. 501, 2408)

§§ 39.12 through 39.29 [Reserved]

■ 12. Add and reserve §§ 39.12 through 39.29 in subpart A.

■ 13. In § 39.30, revise paragraphs (a) introductory text and (a)(4) to read as follows:

§ 39.30 General requirements for a grant.

(a) For a State or Tribal Organization to obtain a grant for the establishment, expansion, or improvement of a State or Tribal veterans cemetery:

* * * * *

(4) The State or Tribal Organization must meet the application requirements in § 39.34; and

* * * * *

■ 14. Amend § 39.31 by:

■ a. Revising paragraph (a).

■ b. Revising paragraphs (b) introductory text, (b)(5), (6), and (8).

■ c. Revising paragraphs (c) introductory text and (c)(2) through (7).

■ d. Revising paragraphs (d) and (e).

■ e. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 39.31 Preapplication requirements.

(a) A State or Tribal Organization seeking a grant for the establishment, expansion, or improvement of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State or Tribal Organization must submit each of the following:

* * * * *

(5) Any comments or recommendations made by the State's or Tribal Organization's ''Single Point of Contact'' reviewing agency.

(6) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State or Tribal Organization has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (e.g., electricians, carpenters).

* * * * *

(8) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State or Tribal Organization has authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

* * * * *

(c) In addition, the State or Tribal Organization must submit written assurance of each of the following conditions:

* * * * *

(2) Title to the site is or will be vested solely in the State or held in trust for the Tribal Organization on trust land.

(3) The State or Tribal Organization possesses legal authority to apply for the grant and to finance and construct the proposed facilities; *i.e.,* legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State or Tribal Organization to act in connection with the application and to provide such additional information as may be required.

Note to paragraph (c)(3): In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(5) The State or Tribal Organization will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause the project to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the Veterans Cemetery Grants Service, for prior approval, changes that alter any cost of the project, use of space, or functional layout; and it will not enter into a construction contract for the project or undertake other activities until the requirements of the grant program have been met.

(6) The State or Tribal Organization will comply with the Federal requirements in 2 CFR parts 180 and 801 and 38 CFR part 43 and submit Standard Form 424D (Assurances—Construction Programs).

(7) The State or Tribal Organization will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State or Tribal Organization must submit a copy of the State or Tribal Organization action authorizing the establishment, maintenance, and operation of the facility as a veterans cemetery in accordance with 38 CFR 39.10(a). If the State or Tribal Organization action is based on legislation, enacted into law, then the legislation must be submitted.

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

* * * * *

■ 15. Amend § 39.32 by:
■ a. Revising the introductory text.
■ b. Revising paragraph (a).
■ c. Revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(2) introductory text.
■ d. Revising paragraph (c).
■ e. Revising paragraph (d) introductory text.
■ f. Revising paragraphs (e) introductory text, (e)(1) through (3), (e)(4) introductory text, (e)(5), (e)(6) introductory text, (e)(7) introductory text, and (e)(9).

The revisions read as follows:

§ 39.32 Plan preparation.

The State or Tribal Organization must prepare Establishment, Expansion, and Improvement Project plans and specifications in accordance with the requirements of this section for review by the VCGS. The plans and specifications must be approved by the VCGS prior to the State's or Tribal Organization's solicitation for construction bids. Once the VCGS approves the plans and specifications, the State or Tribal Organization must obtain construction bids and determine the successful bidder prior to submission of the application. The State or Tribal Organization must establish procedures for determining that costs are reasonable and necessary and can be allocated in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A–87. Once the Establishment, Expansion, and Improvement Project preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by OMB Circular No. A–102, Revised.

(a) *General.* These requirements have been established for the guidance of the State or Tribal Organization and the design team to provide a standard for preparation of drawings, specifications, and estimates.

(b) *Technical requirements.* The State or Tribal Organization should meet these technical requirements as soon as possible after VA approves the Establishment, Expansion, and Improvement Project preapplication.

(1) *Boundary and site survey.* The State or Tribal Organization shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the site survey shall show each of the following items:

* * * * *

(2) *Soil investigation.* The State or Tribal Organization shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information from the previous investigation is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. The investigation shall be adequate to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

* * * * *

(c) *Master plan.* A master plan showing the proposed layout of all facilities—including buildings, roadways, and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the VCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an expansion project or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or ''design development'' drawings.* Following VA approval of the master plan, the State or Tribal Organization must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

* * * * *

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State or Tribal Organization a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State or Tribal Organization to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) *General.* The State or Tribal Organization shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules, and legends. Working drawings shall be complete and adequate for VA review and comment. The State or Tribal Organization shall prepare separate drawings for each of the following types of work: Architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State or Tribal Organization shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at ⅛″ or ¼″ scale.

(3) *Equipment drawings.* The State or Tribal Organization shall submit a list of all equipment to be provided under terms of the grant in the case of an Establishment Project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State or Tribal Organization shall submit a layout plan that shows:

* * * * *

(5) *Structural drawings.* The State or Tribal Organization shall submit complete foundation and framing plans and details, with general notes to include: Governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State or Tribal Organization shall submit:

* * * * *

(7) *Electrical drawings.* The State or Tribal Organization shall submit separate drawings for lighting and power, including drawings of:

* * * * *

(9) *Cost estimates.* The State or Tribal Organization shall show in convenient form and detail the estimated total cost

of the work to be performed under the contract, including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and shall include burial facilities.

* * * * *

■ 16. Revise § 39.33 to read as follows:

§ 39.33 Conferences.

(a) *Predesign conference.* A predesign conference is required for all Establishment, Expansion, and Improvement Projects requiring major construction, primarily to ensure that the State or Tribal Organization becomes oriented to VA procedures, requirements, and any technical comments pertaining to the project. This conference will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State or Tribal Organization and its architects to discuss with VA officials the requirements for a grant.

(Authority: 38 U.S.C. 501, 2408)

■ 17. In § 39.34, revise paragraphs (a) introductory text, (b) introductory text, and (c) to read as follows:

§ 39.34 Application requirements.

(a) For an Establishment, Expansion, and Improvement Project to be considered for grant funding under this subpart, the State or Tribal Organization must submit an application (as opposed to a preapplication) consisting of the following:

* * * * *

(b) Prior to submission of the application, the State or Tribal Organization must submit a copy of an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

* * * * *

(c) If an adverse environmental impact is anticipated, the State or Tribal Organization must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

* * * * *

§§ 39.36 through 39.49 [Reserved]

■ 18. Add and reserve §§ 39.36 through 39.49 in subpart B.

■ 19. In § 39.50, revise paragraphs (b)(3) and (b)(4) introductory text to read as follows:

§ 39.50 Amount of grant.

* * * * *

(b) * * *

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State or Tribal veterans cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State or Tribal veterans cemetery, but only if such equipment:

* * * * *

■ 20. In § 39.51, revise the introductory text and paragraph (d) to read as follows:

§ 39.51 Payment of grant award.

The amount of an Establishment, Expansion, and Improvement Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization agency or instrumentality. Such amount shall be paid by way of reimbursement and in installments that are consistent with the progress of the project, as the Director of the Veterans Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Establishment, Expansion, and Improvement Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the representative of the State or Tribal Organization must submit to VA the following:

* * * * *

(d) Evidence that the State or Tribal Organization has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122, if applicable.

* * * * *

§§ 39.52 through 39.59 [Reserved]

■ 21. Add and reserve §§ 39.52 through 39.59 in subpart B.

■ 22. Revise § 39.60(a) to read as follows:

§ 39.60 General requirements for site selection and construction of veterans cemeteries.

(a) The various codes, requirements, and recommendations of State or Tribal Organization and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants involving construction of veterans cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from VA, National Cemetery Administration, 810 Vermont Avenue NW., Washington, DC 20420.

* * * * *

■ 23. Revise § 39.63 introductory text to read as follows:

§ 39.63 Architectural design standards.

The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the Veterans Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Copies of the 2003 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2003 edition of the NFPA 5000, Building Construction and Safety Code, and the 2002 edition of the National Electrical Code, NFPA 70, may be obtained from the National Fire Protection Association, Inc. (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101, (800) 844–6058 (toll free). Copies of the 2003 edition of the Uniform Mechanical Code and the 2003 edition of the Uniform Plumbing Code may be obtained from the International Association of Plumbing and Mechanical Officials,

5001 E. Philadelphia Street, Ontario, CA 91761–2816. (909) 472–4100 (this is not a toll-free number). The 2002 and 2003 NFPA and IAPMO code publications can be inspected at VA by calling (202) 461–4902 for an appointment.

* * * * *

§§ 39.64 through 39.79 [Reserved]

■ 24. Add and reserve §§ 39.64 through 39.79 in subpart B.

■ 25. In § 39.80, revise paragraphs (a) introductory text and (a)(4) to read as follows:

§ 39.80 General requirements for a grant.

(a) For a State or Tribal Organization to obtain a grant for the operation or maintenance of a State or Tribal veterans cemetery:

* * * * *

(4) The State or Tribal Organization must meet the application requirements in § 39.84; and

* * * * *

■ 26. Amend § 39.81 by:
■ a. Revising paragraph (a).
■ b. Revising paragraphs (b) introductory text, (b)(1) through (3), (b)(9), (b)(10) introductory text, and (b)(11).
■ c. Revising paragraph (c).
■ d. Revising paragraph (d) introductory text.
■ e. Revising paragraph (e).
■ f. Revising the authority citation at the end of the section.

The revisions read as follows:

§ 39.81 Preapplication requirements.

(a) A State or Tribal Organization seeking a grant for the operation or maintenance of a State or Tribal veterans cemetery must submit a preapplication to the Director, Veterans Cemetery Grants Service, through *http://www.cem.va.gov/cem/scg_grants.asp.*

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State or Tribal Organization must submit each of the following:

(1) Standard Form 424 (Application for Federal Assistance) and Standard Form 424C (Budget Information) signed by the authorized representative of the State or Tribal Organization. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) VA Form 40–0895–2 (Certification of Compliance with Provisions of the Davis-Bacon Act) to certify that the State or Tribal Organization has obtained the latest prevailing wage rates for Federally funded projects. Any construction project fully or partially funded with Federal dollars must comply with those rates for specific work by trade employees (e.g., electricians, carpenters).

(3) VA Form 40–0895–6 (Certification of State or Tribal Government Matching Architectural and Engineering Funds to Qualify for Group 1 on the Priority List) to provide documentation that the State or Tribal Organization has legal authority to support the project and the resources necessary to initially fund the architectural and engineering portion of the project development. Once the grant is awarded, VA will reimburse the applicant for all allowable architectural and engineering costs.

* * * * *

(9) A gravesite assessment survey documenting the State or Tribal cemetery's performance related to the standards outlined in paragraph (b)(10) of this section for the year in which the preapplication is submitted.

(10) A program narrative describing how the project will assist the State or Tribal Organization in meeting VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions. Specifically, the preapplication should explain the need for the grant, how the work is to be accomplished, and the expected improvement in the State or Tribal cemetery's performance related to one or more of the following national shrine standards:

* * * * *

(11) A description of the geographic location of the existing State or Tribal veteran cemetery and any other supporting documentation, as requested by the VCGS Director.

* * * * *

(c) In addition, the State or Tribal Organization must submit written assurance of each of the following conditions:

(1) Any cemetery in receipt of a grant under this subpart will be used exclusively for the interment or memorialization of eligible persons, as set forth in § 39.10(a), whose interment or memorialization is not contrary to the conditions of the grant (see § 39.10(b) and 38 U.S.C. 2408(d) and 2411).

(2) Title to the site is or will be vested solely in the State or held in trust for the Tribal Organization on trust land.

(3) The State or Tribal Organization possesses legal authority to apply for the grant.

Note to paragraph (c)(3): In any case where a Tribal Organization is applying for a grant for a cemetery on land held in trust for more than one Indian Tribe, written assurance that the Tribal Organization possesses legal authority to apply for the grant includes certification that the Tribal Organization has obtained the approval of each such Indian Tribe.

(4) The State or Tribal Organization will obtain approval by VA of the final specifications before the project is advertised or placed on the market for bidding; the project will achieve VA's national shrine standards with respect to cleanliness, height and alignment of headstones and markers, leveling of gravesites, or turf conditions in accordance with the application and approved plans and specifications; the State or Tribal Organization will submit to the Director of the Veterans Cemetery Grants Service, for prior approval, changes that alter any cost of the project; and the State or Tribal Organization will not enter into a contract for the project or undertake other activities until all the requirements of the grant program have been met.

(d) Depending on the scope of the project, the VCGS will work with the State or Tribal Organization to determine which, if any, of the following are required:

* * * * *

(e) Upon receipt of a complete preapplication for a grant, including all necessary assurances and all required supporting documentation, VA will determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State or Tribal Organization of any nonconformity. If the preapplication does conform, VA shall notify the State or Tribal Organization that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.3(d).

(Authority: 25 U.S.C. 450b(l); 38 U.S.C. 501, 2408, 2411)

* * * * *

■ 27. Amend § 39.82 by
■ a. Revising paragraphs (a) introductory text and (a)(3).
■ b. Revising paragraphs (b) introductory text and (b)(1).
■ c. Revising paragraph (c).

The revisions read as follows:

§ 39.82 Plan preparation.

(a) The State or Tribal Organization must successfully complete its plan preparation under this section before

submitting a grant application for an Operation and Maintenance Project. The State or Tribal Organization may be required to undertake some or all of the following requirements of this section. After submitting all necessary plans and specifications to the VCGS and obtaining approval for the State or Tribal Organization to solicit for the Operation and Maintenance Project contract bids, the State or Tribal Organization shall:

* * * * *

(3) Comply with the uniform requirements for grants-in-aid to State, Tribal and local governments prescribed by OMB Circular No. A–102, Revised.

(b) Depending on the scope of the project, the VCGS will work with the State or Tribal Organization to determine which of the following will be required prior to submission of an application. As determined by VA, these may include:

(1) A boundary and site survey comprising a survey and legal description of the existing State or Tribal cemetery site;

* * * * *

(c) If VA determines that the project's plans and specifications comply with the terms and conditions prescribed by VA, VA will send the State or Tribal Organization a written letter of approval indicating that the project's plans and specifications comply with the terms and conditions as prescribed by VA. This does not constitute approval of the contract documents. It is the responsibility of the State or Tribal Organization to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

* * * * *

■ 28. Revise § 39.83 to read as follows:

§ 39.83 Conferences.

(a) *Planning conference.* The VCGS may require planning conferences for Operation and Maintenance Projects, primarily to ensure that the State or Tribal Organization becomes oriented to VA's national shrine standards, procedures, requirements, and any technical comments pertaining to the project. These conferences will normally occur over the telephone.

(b) *Additional conferences.* At any time, VA may recommend an additional telephone conference to provide an opportunity for the State or Tribal Organization to discuss with VA officials the requirements for an Operation and Maintenance Project grant.

(Authority: 38 U.S.C. 501, 2408)

■ 29. Revise § 39.84 introductory text to read as follows:

§ 39.84 Application requirements.

For an Operation and Maintenance Project to be considered for grant funding under this subpart, the State or Tribal Organization must submit an application (as opposed to a preapplication) consisting of the following:

* * * * *

§§ 39.86 through 39.99 [Reserved]

■ 30. Add and reserve §§ 39.86 through 39.99 in subpart C.

■ 31. Revise § 39.101 introductory text and paragraph (d) to read as follows:

§ 39.101 Payment of grant award.

The amount of an Operation and Maintenance Project grant award will be paid to the State or Tribal Organization or, if designated by the State or Tribal Organization representative, the State or Tribal veterans cemetery for which such project is being carried out, or to any other State or Tribal Organization agency or instrumentality. Such amount shall be paid by way of reimbursement and in installments that are consistent with the progress of the project, as the Director of the Veterans Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved Operation and Maintenance Project shall be used solely for carrying out such project as approved. As a condition for the final payment, the State or Tribal representative must submit to VA each of the following:

* * * * *

(d) Evidence that the State or Tribal Organization has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.122.

* * * * *

§§ 39.102 through 39.119 [Reserved]

■ 32. Add and reserve §§ 39.102 through 39.119 in subpart C.

■ 33. Revise § 39.120 to read as follows:

§ 39.120 Documentation of grant accomplishments.

Within 60 days of completion of an Operation and Maintenance Project, the State or Tribal Organization must submit to VCGS a written report regarding the work performed to meet VA's national shrine standards. This report must be based on the original justification for the grant as noted in § 39.81(b)(10) and must include statistical data and detailed pictures of the work accomplished.

(Authority: 38 U.S.C. 501, 2408)

■ 34. Amend § 39.121 by:

■ a. Revising the section heading.

■ b. Revising paragraph (a).

■ c. Revising paragraph (b) introductory text.

■ d. Revising paragraphs (c) and (d).

The revisions read as follows:

§ 39.121 State or Tribal Organization responsibilities following project completion.

(a) A State or Tribal Organization that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. If VA determines that under-utilization by any of these groups exists, the State or Tribal Organization shall establish a program to inform members of these groups about benefits available to them. If a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs benefits information in a language other than English, the State or Tribal Organization shall make such information available in the necessary language.

(b) A State or Tribal veterans cemetery that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall be operated and maintained as follows:

* * * * *

(c) VA, in coordination with the State or Tribal Organization, shall inspect the project for compliance with the standards set forth in subpart B of this part for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C of this part for Operation and Maintenance Projects at the project's completion and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State or Tribal veterans cemetery. The State or Tribal Organization shall forward to the Director, Veterans Cemetery Grants Service, a copy of the inspection report, giving the date and location the inspection was made and citing any deficiencies and corrective action to be taken or proposed.

(d) Failure of a State or Tribal Organization to comply with any of paragraphs (a) through (c) of this section shall be considered cause for VA to suspend any payments due the State or Tribal Organization on any project until the compliance failure is corrected.

* * * * *

■ 35. Revise § 39.122 to read as follows:

§ 39.122 Inspections, audits, and reports.

(a) A State or Tribal Organization will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State or Tribal Organization will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see Part 41 of this chapter).

(b) A State or Tribal Organization will make an annual report on VA Form 40–0241 (State Cemetery Data) signed by the authorized representative of the State or Tribal Organization. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(c) A State or Tribal Organization will complete and submit to VA a VA Form 40–0895–13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants-Post Grant Requirements) to ensure that the grantee is aware of and complies with all grant responsibilities and to properly and timely close out the grant.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559)

[FR Doc. 2012–1874 Filed 1–27–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 382 and 391

[Docket No. FMCSA–2011–0073]

RIN 2126–AB35

Harmonizing Schedule I Drug Requirements

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the physical qualifications for drivers and the instructions for the medical examination report to clarify that drivers may not use Schedule I drugs and be qualified to drive commercial motor vehicles (CMVs) under any circumstances. The rule harmonizes FMCSA's provisions regarding pre-employment and return-to-duty test refusals with corresponding Department of Transportation (DOT)-wide provisions. Finally, the rule corrects inaccurate uses of the term ''actual knowledge.''

DATES: This final rule is effective February 29, 2012.

ADDRESSES: All background documents, comments, and materials related to this rule may be viewed in docket number FMCSA–2011–0073 using either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e- mail Angela Ward, Nurse Consultant, Medical Programs Office, Federal Motor Carrier Safety Administration, telephone: (202) 366–3109; email: *angela.ward@dot.gov.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation

A. 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* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box, insert ''FMCSA–2011–0073'' and click ''Search.'' Next, click ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

B. Privacy Act

All comments received are posted without change to *http://www.regulations.gov.* Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

II. Abbreviations

CAA Clean Air Act
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
DEA Drug Enforcement Administration
FMCSA Federal Motor Carrier Safety Administration
FR *Federal Register*
NEPA National Environmental Policy Act
OTETA Omnibus Transportation Employee Testing Act of 1991
U.S.C. United States Code

III. Background

A. History

The Federal laws governing drugs of abuse are set forth in the Comprehensive Drug Abuse Prevention and Control Act of 1970, often referred to as the Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801–971), as amended. Controlled substances are drugs and other substances that have a potential for abuse and psychological and physical dependence. The Drug Enforcement Administration (DEA) is the primary agency responsible for enforcing the Federal controlled substance laws. The DEA regulations, which implement these laws, are found in 21 CFR parts 1300 to 1321. As part of these regulations, DEA publishes an updated list of controlled substances in 21 CFR 1308.11 through 1308.15. The controlled substances are divided into five schedules. The controlled substances listed in the schedule that are relevant to this rulemaking, Schedule I controlled substances, have a high potential for abuse and have no currently accepted medical use in the United States (DEA Interim Final Rule on Electronic Prescriptions for Controlled Substances, 75 FR 16236, March 31, 2010).

The Omnibus Transportation Employee Testing Act of 1991 (OTETA) mandated that DOT establish a

controlled substances (drug) and alcohol testing program applicable to regulated entities and individuals performing safety sensitive functions. Entitled ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs,'' 49 CFR part 40 contains the DOT regulations that detail how testing must be administered and prescribes procedures to protect the integrity of the process. FMCSA's related drug and alcohol testing regulations are in 49 CFR part 382, ''Controlled Substances and Alcohol Use and Testing.''

Section 382.213 prohibits CMV drivers from using any controlled substances when on duty or reporting for duty except when prescribed by a licensed medical practitioner who has advised the driver that the prescribed substance will not adversely affect the driver's ability to operate a CMV. Section 382.213 has remained largely unchanged since its adoption in 1994, outside of a technical amendment changing the term ''physician'' to ''licensed medical practitioner'' for the purpose of the prescription exception (61 FR 9556, March 8, 1996).

In addition to those in part 382, the Federal Motor Carrier Safety Regulations (FMCSRs) include several other regulations governing drivers' use of drugs. Section 391.41(b)(12) was first promulgated in 1970, and stated that persons who ''use an amphetamine, narcotic, or any habit-forming drug, are not medically qualified to operate a commercial motor vehicle'' (35 FR 6463, April 22, 1970). The regulation was revised several times, most notably in 1984, when the DEA's Schedule I drugs were added to the list of drugs prohibited by § 391.41(b)(12) (49 FR 44215, November 5, 1984). Section 391.43(f) incorporates the substance of § 391.41(b)(12) in the instructions to the medical examiner.

Sections 382.213 and 391.41(b)(12) were designed to complement § 392.4, which prohibits the use of drugs by CMV drivers. Section 392.4 contains an exception for use of non-Schedule I drugs ''administered to a driver by or under the instructions of a licensed medical practitioner, as defined in § 382.107 of this subchapter, who has advised the driver that the substance will not affect the driver's ability to safely operate a motor vehicle'' (49 CFR 392.4).

On July 8, 2011 (76 FR 40306), FMCSA proposed a rule to resolve a perceived inconsistency among: §§ 382.213, 391.41(b)(12), 391.43(f), and 392.4 of the FMCSRs; DOT-wide drug regulations in part 40; and DEA regulations. The Notice of Proposed Rulemaking (NPRM) proposed to eliminate these perceived inconsistencies by making three changes to FMCSA's regulations. The first was to amend the minimum physical qualifications for CMV drivers to clarify that the use of Schedule I drugs is prohibited under all circumstances. The second was to require that drivers who refuse to submit to pre-employment and return-to-duty tests be subject to the same referral, evaluation, and treatment steps that are required after refusing other types of tests. The third was to replace the term ''actual knowledge'' with the word ''knowledge'' in the context of regulations addressing employers' knowledge of positive test results. The comment period ended on September 6, 2011, and the Agency received two comments.

B. Legal Authority

FMCSA has general authority to promulgate safety standards, including those governing drivers' use of drugs while operating a CMV. The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) gives the Secretary of Transportation (Secretary) authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ensure that—(1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(g) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation. This rule implements, in part, the Administrator's delegated authority under Section 206(a)(3) of the 1984 Act to ensure that the physical condition of CMV operators is adequate to enable them to operate vehicles safely by clarifying that drivers may not use Schedule I drugs and be qualified to drive CMVs under any circumstances. The rule also exercises the broad recordkeeping and implementation authority under Section 211. The other subsections of Section 206(a) do not apply because this final rule only addresses the physical condition of CMV drivers.

In addition, and as stated above, OTETA (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, October 28, 1991, partially codified at 49 U.S.C. 31306), mandated the alcohol and controlled substances (drug) testing program for DOT. OTETA required the Secretary to promulgate regulations for alcohol and controlled substances testing for persons in safety-sensitive positions in four modes of transportation—motor carrier, airline, railroad, and mass transit. Those regulations, including subsequent amendments, are codified at 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs.'' Part 40 prescribes drug and alcohol testing requirements for all DOT-regulated parties, including employers of drivers with commercial driver's licenses subject to FMCSA testing requirements. FMCSA's related drug and alcohol testing regulations are in 49 CFR part 382, ''Controlled Substances and Alcohol Use and Testing.''

IV. Comments on the Proposed Rule

FMCSA received two comments in response to the NPRM (76 FR 40306, July 8, 2011). The commenters included a member of the public and the American Trucking Associations (ATA). Both commenters expressed support for the rulemaking. The individual commenter stated the final rule ''can help with the safety on the road and the public.'' Specifically, ATA ''commended FMCSA for its continued efforts to clarify and improve the drug and alcohol testing regulations.''

Pre-employment Tests

ATA commented that it believed that the proposed changes to § 382.211 (pre-employment tests) would likely be ineffective because any driver that fails a pre-employment test would probably seek a position elsewhere and not report the failed test to future employers. ATA stated that this is a loophole that cannot be closed until FMCSA implements a national clearinghouse for drug/alcohol test results.

FMCSA Response. Implementation of a national clearinghouse is outside the scope of the rule FMCSA proposed. FMCSA is considering, however, addressing this issue as a part of a future rulemaking.

V. Section-by-Section Analysis

Sections 382.201 and 382.215

This rule amends §§ 382.201 and 382.215 to correct improper use of the term ''actual knowledge.'' An employer has ''actual knowledge'' that an employee has used drugs or alcohol in violation of FMCSA rules when he or she directly observes or otherwise learns that a driver is using controlled substances or consuming alcohol while on duty (49 CFR 382.107). Actual knowledge, as defined at § 382.107, is distinct from an employer knowing that his or her employee-driver tested positive or refused a DOT drug or alcohol test. Because §§ 382.201 and 382.215 set forth prohibitions related to an employer's knowledge related to testing, not observation, the use of the term ''actual knowledge'' is not appropriate. FMCSA replaces the term ''actual knowledge'' with ''knowledge'' in these sections, clarifying that these prohibitions refer to the knowledge of test results, not employer observation of prohibited conduct.

Section 382.211

Prior to this final rule, § 382.211 only prohibited drivers from refusing to submit to a post-accident, random, reasonable suspicion, or follow-up drug or alcohol test. This rule amends this section to include refusals for pre-employment testing and return-to-duty testing as additional prohibitions. This amendment makes the regulation consistent with DOT-wide drug and alcohol testing rules at 49 CFR 40.191(a)(3).

Section 382.213

Prior to this final rule, the text of § 382.213 prohibited CMV drivers from using any drugs when on duty or reporting for duty except when prescribed by a licensed medical practitioner who has advised the driver that the prescribed substance will not adversely affect the driver's ability to operate a CMV. In this final rule, the Agency amends the language regarding the drugs that CMV drivers are prohibited from using in order to differentiate between Schedule I drugs and non-Schedule I drugs. The changes make it clear that Schedule I drugs may not be used by a CMV driver under any circumstances. FMCSA's regulations continue to permit the use of non-Schedule I drugs under limited circumstances, when prescribed by a licensed medical practitioner.

Sections 391.41 and 391.43

Prior to this final rule, § 391.41(b)(12)(i) stated that a driver may not use: Controlled substances on the DEA Schedule I, amphetamines, narcotics, or other habit-forming drugs. Section 391.41(b)(12)(ii) contained an exception for a substance or drug prescribed by a licensed medical practitioner who is familiar with the driver's history and work duties and has advised the driver that the prescribed substance or drug will not adversely affect his or her ability to safely operate a CMV. Previously, § 391.41(b)(12) did not differentiate between Schedule I and non-Schedule I drugs for the purpose of the prescription exception. However, FMCSA has never considered this exception to permit use of Schedule I drugs by CMV drivers under any circumstance because Federal law prohibits Schedule I drugs from being prescribed in the United States.

The Agency amends § 391.41 to remove any ambiguity and to clarify that the exception that allows a CMV driver to use a substance or drug if it is prescribed by a licensed medical practitioner who is familiar with the driver's medical history and has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a CMV, only applies to non-Schedule I prescribed substances, amphetamines, narcotics, or other habit-forming drugs.

Section 391.43(f) incorporates the substance of § 391.41(b)(12) into pages 4 and 8 of the Instructions to the Medical Examiner. FMCSA makes no other changes to this document.

VI. Changes to the Proposed Rule in this Final Rule

This final rule makes the following minor changes to the NPRM to improve the clarity and intent of the rule.

The final rule removes the term ''controlled substance'' from §§ 382.213 and 391.41(b)(12) and replaces it with ''drug or substance.'' This new language conforms to terminology the DEA uses in its regulations at 21 CFR part 1308. The final rule also changes the language in §§ 382.213(b) and 391.41(b)(12)(ii) that references non-Schedule I drugs or substances and replaces it with the phrase ''that is identified in the other Schedules in 21 CFR part 1308.'' The Agency did not intend to expand the scope of these sections to non-scheduled drugs. This change makes the Agency's intent clear by specifically stating that they only apply to the use of drugs or substances that appear on one of the DEA's controlled substances schedules.

The final rule changes the following highlighted language proposed in § 391.41(b)(12)(ii): ''Does not use any non-Schedule I controlled substance except when the use is *pursuant to the instructions of* a licensed medical practitioner * * * '' After further consideration, the Agency concluded that this change of language is inconsistent with language used elsewhere in the Agency's regulations and would be confusing to public. As a result, the final rule does not adopt this change. The final rule removes the language ''*pursuant to the instructions of*'' and replaces it with the original language in this section, ''*prescribed by.*''

The final rule also changes § 391.43(f) to reflect these changes on pages 4 and 8 of the Instructions to the Medical Examiner.

Finally, the final rule removes the following language from page 8 of the Instructions to the Medical Examiner: ''If a driver uses a Schedule I drug or other substance, an amphetamine, a narcotic, or any other habit-forming drug, it may be cause for the driver to be found medically unqualified,'' and replaces it with: ''If a driver uses an amphetamine, a narcotic or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. If a driver uses a Schedule I drug or substance, it will be cause for the driver to be found medically unqualified.'' This change harmonizes the Instructions with the other changes made in this final rule. Specifically, it makes clear that a driver using a Schedule I drug or substance is not medically qualified to drive under any circumstances.

VII. Regulatory Analyses

Regulatory Planning and Review

This action does not meet the criteria for a ''significant regulatory action,'' either as specified in Executive Order 12866 as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011) or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The estimated economic costs of the rule do not exceed the $100 million annual threshold nor does the Agency expect the rule to have substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget. No expenditures are required of the affected population because the rule only clarifies existing rules, amends inconsistencies in FMCSA's current regulations, and harmonizes them with DOT-wide regulations and DEA regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, as well as governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, Title II, 110 Stat. 857), the rule is not expected to have a significant economic impact on a substantial number of small entities because the rule only clarifies existing rules, amends inconsistencies in FMCSA's current regulations, and harmonizes them with the DOT-wide regulations and DEA regulations. Accordingly, I certify that a regulatory flexibility analysis is not necessary.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 858), FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Angela Ward, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule. FMCSA does not intend to take action against small entities that have questions about this rule or any policy or action of the Agency.

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 FMCSA, call 1–888–REG–FAIR (1–(888) 734–3247).

Unfunded Mandates Reform Act of 1995

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 $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year. This rule will not result in such expenditure; FMCSA expects the effects of this rule to be minimal because it only clarifies existing rules, amends inconsistencies in FMCSA's current regulations, and harmonizes them with the DOT-wide regulations and DEA regulations.

Paperwork Reduction Act

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

Privacy Impact Assessment

FMCSA conducted a Privacy Threshold Analysis for the rulemaking and determined that this rule is not a privacy-sensitive rulemaking because it will not require any collection, maintenance, or dissemination of Personally Identifiable Information from or about members of the public.

Executive Order 13132 (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 either preempts State law or imposes a substantial direct cost of compliance on States or localities. Although States and localities are prohibited by 49 U.S.C. 31306(g) from adopting or enforcing a law or regulation inconsistent with OTETA or its implementing regulations, parts 382 and 391 and this rule do not impose substantial direct costs of compliance on States or localities. FMCSA has therefore determined that this rule does not have implications for federalism.

Executive Order 12630 (Taking of Private Property)

This rule does 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.

Executive Order 12988 (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.

Executive Order 13045 (Protection of Children)

FMCSA 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 might disproportionately affect children.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency 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.

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, FMCSA did not consider the use of voluntary consensus standards.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this rule is categorically excluded from further analysis and documentation in an environmental

assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(r) of Appendix 2. The Categorical Exclusion under paragraph 6(y)(6) relates to ''regulations implementing employer controlled substances and alcohol use and testing procedures * * * '' which is the focus of this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions are expected to fall within the CAA *de minimis* standards and are not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

List of Subjects

49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons stated in the preamble, FMCSA amends 49 CFR parts 382 and 391 as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; and 49 CFR 1.73.

§ 382.201 [Amended]

■ 2. Amend § 382.201 by removing the word ''actual'' between the words ''having'' and ''knowledge.''

■ 3. Revise § 382.211 to read as follows:

§ 382.211 Refusal to submit to a required alcohol or controlled substances test.

No driver shall refuse to submit to a pre-employment controlled substance test required under § 382.301, a post-accident alcohol or controlled substance test required under § 382.303, a random alcohol or controlled substances test required under § 382.305, a reasonable suspicion alcohol or controlled substance test required under § 382.307, a return-to-duty alcohol or controlled substances test required under § 382.309, or a follow-up alcohol or controlled substance test required under § 382.311. No employer shall permit a driver who refuses to submit to such tests to perform or continue to perform safety-sensitive functions.

■ 4. Revise § 382.213 to read as follows:

§ 382.213 Controlled substance use.

(a) No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions when the driver uses any drug or substance identified in 21 CFR 1308.11 Schedule I.

(b) No driver shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is pursuant to the instructions of a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(c) No employer having actual knowledge that a driver has used a controlled substance shall permit the driver to perform or continue to perform a safety-sensitive function.

(d) An employer may require a driver to inform the employer of any therapeutic drug use.

§ 382.215 [Amended]

■ 5. Amend § 382.215 by removing the word ''actual'' between the words ''having'' and ''knowledge.''

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

■ 6. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

■ 7. Revise § 391.41 paragraph (b)(12) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

* * * * *

■ 8. Amend § 391.43(f) by removing the Medical Examination Report for Commercial Driver Fitness Determination, form 649–F (6045), and adding in its place the following form, to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(f) * * *

BILLING CODE 4910–EX–P

Medical Examination Report
FOR COMMERCIAL DRIVER FITNESS DETERMINATION

649-F (6045)

1. DRIVER'S INFORMATION Driver completes this section

Driver's Name (Last, First, Middle)	Social Security No.	Birthdate M / D / Y	Age	Sex ☐ M ☐ F	New Certification ☐ Recertification ☐ Follow-up ☐	Date of Exam

Address	City, State, Zip Code	Work Tel: ( ) Home Tel: ( )	Driver License No.	License Class ☐ A ☐ B ☐ C ☐ D ☐ Other	State of Issue

2. HEALTH HISTORY Driver completes this section, but medical examiner is encouraged to discuss with driver.

Yes No

- ☐ ☐ Any illness or injury in the last 5 years?
- ☐ ☐ Head/Brain injuries, disorders or illnesses
- ☐ ☐ Seizures, epilepsy
  - ☐ medication_____
- ☐ ☐ Eye disorders or impaired vision (except corrective lenses)
- ☐ ☐ Ear disorders, loss of hearing or balance
- ☐ ☐ Heart disease or heart attack; other cardiovascular condition
  - ☐ medication_____
- ☐ ☐ Heart surgery (valve replacement/bypass, angioplasty, pacemaker) ☐
- ☐ ☐ High blood pressure medication_____
- ☐ ☐ Muscular disease
- ☐ ☐ Shortness of breath

Yes No

- ☐ ☐ Lung disease, emphysema, asthma, chronic bronchitis
- ☐ ☐ Kidney disease, dialysis
- ☐ ☐ Liver disease
- ☐ ☐ Digestive problems
- ☐ ☐ Diabetes or elevated blood sugar controlled by:
  - ☐ diet
  - ☐ pills
  - ☐ insulin
- ☐ ☐ Nervous or psychiatric disorders, e.g., severe depression
  - medication_____
- ☐ ☐ Loss of, or altered consciousness

Yes No

- ☐ ☐ Fainting, dizziness
- ☐ ☐ Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring
- ☐ ☐ Stroke or paralysis
- ☐ ☐ Missing or impaired hand, arm, foot, leg, finger, toe
- ☐ ☐ Spinal injury or disease
- ☐ ☐ Chronic low back pain
- ☐ ☐ Regular, frequent alcohol use
- ☐ ☐ Narcotic or habit forming drug use

For any YES answer, indicate onset date, diagnosis, treating physician's name and address, and any current limitation. List all medications (including over-the-counter medications) used regularly or recently.

_____

_____

_____

I certify that the above information is complete and true. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate.

Driver's Signature_____ Date_____

Medical Examiner's Comments on Health History (The medical examiner must review and discuss with the driver any "yes" answers and potential hazards of medications, including over-the-counter medications, while driving. This discussion must be documented below.)

_____

_____

_____

_____

TESTING (Medical Examiner completes Section 3 through 7) Name: Last, First, Middle,

3. VISION

Standard: At least 20/40 acuity (Snellen) in each eye with or without correction. At least 70 degrees peripheral in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

INSTRUCTIONS: When other than the Snellen chart is used, give test results in Snellen-comparable values. In recording distance vision, use 20 feet as normal. Report visual acuity as a ratio with 20 as numerator and the smallest type read at 20 feet as denominator. If the applicant wears corrective lenses, these should be worn while visual acuity is being tested. If the driver habitually wears contact lenses, or intends to do so while driving, sufficient evidence of good tolerance and adaptation to their use must be obvious. ***Monocular drivers are not qualified.***

Numerical readings must be provided.

ACUITY	UNCORRECTED	CORRECTED	HORIZONTAL FIELD OF VISION
Right Eye	20/	20/	Right Eye °
Left Eye	20/	20/	Left Eye °
Both Eyes	20/	20/	

Applicant can recognize and distinguish among traffic control signals and devices showing standard red, green, and amber colors ? ☐ Yes ☐ No

Applicant meets visual acuity requirement only when wearing:
☐ Corrective Lenses

Monocular Vision: ☐ Yes ☐ No

Complete next line only if vision testing is done by an opthalmologist or optometrist

Date of Examination | Name of Ophthalmologist or Optometrist (print) | Tel. No. | License No./ State of Issue | Signature

4. HEARING

Standard: a) Must first perceive forced whispered voice ≥ 5 ft., with or without hearing aid, or b) average hearing loss in better ear ≤ 40 dB
☐ Check if hearing aid used for tests. ☐ Check if hearing aid required to meet standard.

INSTRUCTIONS: To convert audiometric test results from ISO to ANSI, -14 dB from ISO for 500Hz, -10dB for 1,000 Hz, -8.5 dB for 2000 Hz. To average, add the readings for 3 frequencies tested and divide by 3.

Numerical readings must be recorded.

a) Record distance from individual at which forced whispered voice can first be heard.	Right ear \ Feet	Left Ear \ Feet

b) If audiometer is used, record hearing loss in decibels. (acc. to ANSI Z24.5-1951)	Right Ear			Left Ear		
	500 Hz	1000 Hz	2000 Hz	500 Hz	1000 Hz	2000 Hz
	Average:			Average:		

5. BLOOD PRESSURE/ PULSE RATE

Numerical readings must be recorded. Medical Examiner should take at least two readings to confirm BP.

Blood Pressure	Systolic	Diastolic

Driver qualified if ≤140/90.

Pulse Rate: ☐ Regular ☐ Irregular

Reading	Category	Expiration Date	Recertification
140-159/90-99	Stage 1	1 year	1 year if ≤140/90. One-time certificate for 3 months if 141-159/91-99.
160-179/100-109	Stage 2	One-time certificate for 3 months.	1 year from date of exam if ≤140/90
≥180/110	Stage 3	6 months from date of exam if ≤10/90	6 months if ≤ 140/90

6. LABORATORY AND OTHER TEST FINDINGS

Numerical readings must be recorded.

URINE SPECIMEN	SP. GR.	PROTEIN	BLOOD	SUGAR

Urinalysis is required. Protein, blood or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Other Testing (Describe and record) _____

7. PHYSICAL EXAMINATION Height: _____ (in.) Weight: _____ (lbs.) Name: Last, First, Middle,

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen or is readily amenable to treatment. Even if a condition does not disqualify a driver, the medical examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible particularly if the condition, if neglected, could result in more serious illness that might affect driving.

Check YES if there are any abnormalities. Check NO if the body system is normal. Discuss any YES answers in detail in the space below, and indicate whether it would affect the driver's ability to operate a commercial motor vehicle safely. Enter applicable item number before each comment. If organic disease is present, note that it has been compensated for. See *Instructions to the Medical Examiner* for guidance.

BODY SYSTEM	CHECK FOR:	YES*	NO	BODY SYSTEM	CHECK FOR:	YES*	NO
1. General Appearance	Marked overweight, tremor, signs of alcoholism, problem drinking, or drug abuse.			7. Abdomen and Viscera	Enlarged liver, enlarged spleen, masses, bruits, hernia, significant abdominal wall muscle weakness.		
2. Eyes	Pupillary equality, reaction to light, accommodation, ocular motility, ocular muscle imbalance, extraocular movement, nystagmus, exophthalmos. Ask about retinopathy, cataracts, aphakia, glaucoma, macular degeneration and refer to a specialist if appropriate.			8. Vascular System	Abnormal pulse and amplitude, cartoid or arterial bruits, varicose veins.		
				9. Genito-urinary System	Hernias.		
3. Ears	Scarring of tympanic membrane, occlusion of external canal, perforated eardrums.			10. Extremities- Limb impaired. Driver may be subject to SPE certificate if otherwise qualified.	Loss or impairment of leg, foot, toe, arm, hand, finger, Perceptible limp, deformities, atrophy, weakness, paralysis, clubbing, edema, hypotonia. Insufficient grasp and prehension in upper limb to maintain steering wheel grip. Insufficient mobility and strength in lower limb to operate pedals properly.		
4. Mouth and Throat	Irremediable deformities likely to interfere with breathing or swallowing.						
5. Heart	Murmurs, extra sounds, enlarged heart, pacemaker, implantable defibrillator.			11. Spine, other musculoskeletal	Previous surgery, deformities, limitation of motion, tenderness.		
6. Lungs and chest, not including breast examination	Abnormal chest wall expansion, abnormal respiratory rate, abnormal breath sounds including wheezes or alveolar rales, impaired respiratory function, cyanosis. Abnormal findings on physical exam may require further testing such as pulmonary tests and/ or xray of chest.			12. Neurological	Impaired equilibrium, coordination or speech pattern; asymmetric deep tendon reflexes, sensory or positional abnormalities, abnormal patellar and Babinki's reflexes, ataxia.		

***COMMENTS:** _____

Note certification status here. See Instructions to the Medical Examiner for guidance.

- ☐ Meets standards in 49 CFR 391.41; qualifies for 2 year certificate
- ☐ Does not meet standards
- ☐ Meets standards, but periodic monitoring required due to _____.
  Driver qualified only for: ☐3 months ☐6 months ☐1 year ☐ Other

Temporarily disqualified due to (condition or medication): _____

Return to medical examiner's office for follow up on _____

- ☐ Wearing corrective lense
- ☐ Wearing hearing aid
- ☐ Accompanied by a _____waiver/ exemption. Driver must present exemption at time of certification.
- ☐ Skill Performance Evaluation (SPE) Certificate
- ☐ Driving within an exempt intracity zone (See 49 CFR 391.62)
- ☐ Qualified by operation of 49 CFR 391.64

Medical Examiner's signature _____

Medical Examiner's name _____

Address _____

Telephone Number _____

If meets standards, complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h). (Driver must carry certificate when operating a commercial vehicle.)

49 CFR 391.41 Physical Qualifications for Drivers

THE DRIVER'S ROLE

Responsibilities, work schedules, physical and emotional demands, and lifestyles among commercial drivers vary by the type of driving that they do. Some of the main types of drivers include the following: turn around or short relay (drivers return to their home base each evening); long relay (drivers drive 9-11 hours and then have at least a 10-hour off-duty period), straight through haul (cross country drivers); and team drivers (drivers share the driving by alternating their 5-hour driving periods and 5-hour rest periods.)

The following factors may be involved in a driver's performance of duties: abrupt schedule changes and rotating work schedules, which may result in irregular sleep patterns and a driver beginning a trip in a fatigued condition; long hours; extended time away from family and friends, which may result in lack of social support; tight pickup and delivery schedules, with irregularity in work, rest, and eating patterns, adverse road, weather and traffic conditions, which may cause delays and lead to hurriedly loading or unloading cargo in order to compensate for the lost time; and environmental conditions such as excessive vibration, noise, and extremes in temperature. Transporting passengers or hazardous materials may add to the demands on the commercial driver.

There may be duties in addition to the driving task for which a driver is responsible and needs to be fit. Some of these responsibilities are: coupling and uncoupling trailer(s) from the tractor, loading and unloading trailer(s) (sometimes a driver may lift a heavy load or unload as much as 50,000 lbs. of freight after sitting for a long period of time without any stretching period); inspecting the operating condition of tractor and/or trailer(s) before, during and after delivery of cargo; lifting, installing, and removing heavy tire chains; and, lifting heavy tarpaulins to cover open top trailers. The above tasks demand agility, the ability to bend and stoop, the ability to maintain a crouching position to inspect the underside of the vehicle, frequent entering and exiting of the cab, and the ability to climb ladders on the tractor and/or trailer(s).

In addition, a driver must have the perceptual skills to monitor a sometimes complex driving situation, the judgment skills to make quick decisions, when necessary, and the manipulative skills to control an oversize steering wheel, shift gears using a manual transmission, and maneuver a vehicle in crowded areas.

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§391.41 PHYSICAL QUALIFICATIONS FOR DRIVERS

(a) A person shall not drive a commercial motor vehicle unless he is physically qualified to do so and, except as provided in §391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a commercial motor vehicle.

(b) A person is physically qualified to drive a motor vehicle if that person:

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate (formerly Limb Waiver Program) pursuant to §391.49.

(2) Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a SPE Certificate pursuant to §391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure.

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a commercial motor vehicle safely.

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a commercial motor vehicle safely.

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a commercial motor vehicle safely.

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a commercial motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a commercial motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green and amber;

(11) First perceives a forced whispered voice in the better ear not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz and 2,000 Hz with or without a hearing device when the audiometric device is calibrated to the American National Standard (formerly ASA Standard) Z24.5-1951;

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug.

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

(13) Has no current clinical diagnosis of alcoholism.

INSTRUCTIONS TO THE MEDICAL EXAMINER

General Information

The purpose of this examination is to determine a driver's physical qualification to operate a commercial motor vehicle (CMV) in interstate commerce according to the requirements in 49 CFR 391.41-49. Therefore, the medical examiner must be knowledgeable of these requirements and guidelines developed by the FMCSA to assist the medical examiner in making the qualification determination. The medical examiner should be familiar with the driver's responsibilities and work environment and is referred to the section on the form, **The Driver's Role**.

In addition to reviewing the **Health History** section with the driver and conducting the physical examination, the medical examiner should discuss common prescriptions and over-the-counter medications relative to the side effects and hazards of these medications while driving. Educate the driver to read warning labels on all medications. History of certain conditions may be cause for rejection, particularly if required by regulation, or may indicate the need for additional laboratory tests or more stringent examination perhaps by a medical specialist. These decisions are usually made by the medical examiner in light of the driver's job responsibilities, work schedule and potential for the conditions to render the driver unsafe.

Medical conditions should be recorded even if they are not cause for denial, and they should be discussed with the driver to encourage appropriate remedial care. This advice is especially needed when a condition, if neglected, could develop into a serious illness that could affect driving.

If the medical examiner determines that the driver is fit to drive and is also able to perform non-driving responsibilities as may be required, the medical examiner signs the medical certificate which the driver must carry with his/her license. The certificate must be dated. **Under current regulations, the certificate is valid for two years, unless the driver has a medical condition that does not prohibit driving but does require more frequent monitoring**. In such situations, the medical certificate should be issued for a shorter length of time. The physical examination should be done carefully and at least as complete as is indicated by the attached form. Contact the FMCSA at (202) 366-1790 for further information (a vision exemption, qualifying drivers under 49 CFR 391.64, etc.).

Interpretation of Medical Standards

Since the issuance of the regulations for physical qualifications of commercial drivers, the Federal Motor Carrier Safety Administration (FMCSA) has published recommendations called Advisory Criteria to help medical examiners in determining whether a driver meets the physical qualifications for commercial driving. These recommendations have been condensed to provide information to medical examiners that (1) is directly relevant to the physical examination and (2) is not already included in the medical examination form. The specific regulation is printed in italics and it's reference by section is highlighted.

Federal Motor Carrier Safety Regulations
-Advisory Criteria-

Loss of Limb:
§391.41(b)(1)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no loss of a foot, leg, hand or an arm, or has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

Limb Impairment:
§391.41(b)(2)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no impairment of: (i) A hand or finger which interferes with prehension or power grasping; or (ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iii) Any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or (iv) Has been granted a Skill Performance Evaluation (SPE) Certificate pursuant to Section 391.49.

A person who suffers loss of a foot, leg, hand or arm or whose limb impairment in any way interferes with the safe performance of normal tasks associated with operating a commercial motor vehicle is subject to the Skill Performance Evaluation Certification Program pursuant to section 391.49, assuming the person is otherwise qualified.

With the advancement of technology, medical aids and equipment modifications have been developed to compensate for certain disabilities. The SPE Certification Program (formerly the Limb Waiver Program) was designed to allow persons with the loss of a foot or limb or with functional impairment to qualify under the Federal Motor Carrier Safety Regulations (FMCSRs) by use of prosthetic devices or equipment modifications which enable them to safely operate a commercial motor vehicle. Since there are no medical aids equivalent to the original body or limb, certain risks are still present, and thus restrictions may be included on individual SPE certificates when a State Director for the FMCSA determines they are necessary to be consistent with safety and public interest.

If the driver is found otherwise medically qualified (391.41(b)(3) through (13)), the medical examiner must check on the medical certificate that the driver is qualified only if accompanied by a SPE certificate. The driver and the employing motor carrier are subject to appropriate penalty if the driver operates a motor vehicle in interstate or foreign commerce without a curent SPE certificate for his/her physical disability.

Diabetes
§391.41(b)(3)

A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control.

Diabetes mellitus is a disease which, on occasion, can result in a loss of consciousness or disorientation in time and space. Individuals who require insulin for control have conditions which can get out of control by the use of too much or too little insulin, or food intake not consistent with the insulin dosage. Incapacitation may occur from symptoms of hyperglycemic or hypoglycemic reactions (drowsiness, semiconsciousness, diabetic coma or insulin shock).

The administration of insulin is, within itself, a complicated process requiring insulin, syringe, needle, alcohol sponge and a sterile technique. Factors related to long-haul commercial motor vehicle operations, such as fatigue, lack of sleep, poor diet, emotional conditions, stress, and concomitant illness, compound the dangers, the FMCSA has consistently held that a diabetic who uses insulin for control does not meet the minimum physical requirements of the FMCSRs.

Hypoglycemic drugs, taken orally, are sometimes prescribed for diabetic individuals to help stimulate natural body production of insulin. If the condition can be controlled by the use of oral medication and diet, then an individual may be qualified under the present rule. CMV drivers who do not meet the Federal diabetes standard may call (202) 366-1790 for an application for a diabetes exemption.
(See Conference Report on Diabetic Disorders and Commercial Drivers and Insulin-Using Commercial Motor Vehicle Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Cardiovascular Condition
§391.41(b)(4)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse or congestive cardiac failure.

The term "has no current clinical diagnosis of" is specifically designed to encompass: "*a clinical diagnosis of*" (1) a current cardiovascular condition, or (2) a cardiovascular condition which has not fully stabilized regardless of the time limit The term "*known to be*

accompanied by" is designed to include a clinical diagnosis of a cardiovascular disease (1) which is accompanied by symptoms of syncope, dyspnea, collapse or congestive cardiac failure; and/or (2) which is likely to cause syncope, dyspnea, collapse or congestive cardiac failure.

It is the intent of the FMCSRs to render unqualified, a driver who has a current cardiovascular disease which is accompanied by and/or likely to cause symptoms of syncope, dyspnea, collapse, or congestive cardiac failure. However, the subjective decision of whether the nature and severity of an individual's condition will likely cause symptoms of cardiovascular insufficiency is on an individual basis and qualification rests with the medical examiner and the motor carrier. In those cases where there is an occurrence of cardiovascular insufficiency (myocardial infarction, thrombosis, etc.), it is suggested before a driver is certified that he or she have a normal resting and stress electrocardiogram (ECG), no residual complications and no physical limitations, and is taking no medication likely to interfere with safe driving.

Coronary artery bypass surgery and pacemaker implantation are remedial procedures and thus, not unqualifying. Implantable cardioverter defibrillators are disqualifying due to risk of syncope. Coumadin is a medical treatment which can improve the health and safety of the driver and should not, by its use, medically disqualify the commercial driver. The emphasis should be on the underlying medical condition(s) which require treatment and the general health of the driver. The FMCSA should be contacted at (202) 366-1790 for additional recommendations regarding the physical qualification of drivers on coumadin.

(See Cardiovasular Advisory Panel Guidelines for the Medical examination of Commercial Motor Vehicle Drivers at: http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Respiratory Dysfunction
§391.41(b)(5)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with ability to control and drive a commercial motor vehicle safely.

Since a driver must be alert at all times, any change in his or her mental state is in direct conflict with highway safety. Even the slightest impairment in respiratory function under emergency conditions (when greater oxygen supply is necessary for performance) may be detrimental to safe driving.

There are many conditions that interfere with oxygen exchange and may result in incapacitation, including emphysema, chronic asthma, carcinoma, tuberculosis, chronic bronchitis and sleep apnea. If the medical examiner detects a respiratory dysfunction, that in any way is likely to interfere with the driver's ability to safely control and drive a commercial motor vehicle, the driver must be referred to a specialist for further evaluation and therapy. Anticoagulation therapy for deep vein thrombosis and/or pulmonary thromboembolism is not unqualifying once optimum dose is achieved, provided lower extremity venous examinations remain normal and the treating physician gives a favorable recommendation.

Hypertension
§391.41(b)(6)

A person is physically qualified to drive a commercial motor vehicle if that person:

Has no current clinical diagnosis of high blood pressure likely to interfere with ability to operate a commercial motor vehicle safely.

Hypertension alone is unlikely to cause sudden collapse; however, the likelihood increases when target organ damage, particularly cerebral vascular disease, is present. This regulatory criteria is based on FMCSA's Cardiovascular Advisory Guidelines for the Examination of CMV Drivers, which used the Sixth Report of the Joint National Committee on Detection, Evaluation, and Treatment of High Blood Pressure (1997).

Stage 1 hypertension corresponds to a systolic BP of 140-159 mmHg and/or a diastolic BP of 90-99 mmHg. The driver with a BP in this range is at low risk for hypertension-related acute incapacitation and may be medically certified to drive for a one-year period. Certification examinations should be done annually thereafter and should be at or less than 140/90. If less than 160/100, certification may be extended one time for 3 months.

A blood pressure of 160-179 systolic and/or 100-109 diastolic is considered Stage 2 hypertension, and the driver is not necessarily unqualified during evaluation and institution of treatment. The driver is given a one time certification of three months to reduce his or her blood pressure to less than or equal to 140/90. A blood pressure in this range is an absolute indication for anti-hypertensive drug therapy. Provided treatment is well tolerated and the driver demonstrates a BP value of 140/90 or less, he or she may be certified for one year from date of the initial exam. The driver is certified annually thereafter.

A blood pressure at or greater than 180 (systolic) and 110 (diastolic) is considered Stage 3, high risk for an acute BP-related event. The driver may **not** be qualified, even temporarily, until reduced to 140/90 or less and treatment is well tolerated. The driver may be certified for 6 months and biannually (every 6 months) thereafter if at recheck BP is 140/90 or less.

Annual recertification is recommended if the medical examiner does not know the severity of hypertension prior to treatment.

An elevated blood pressure finding should be confirmed by at least two subsequent measurements on different days.

Treatment includes nonpharmacologic and pharmacologic modalities as well as counseling to reduce other risk factors. Most antihypertensive medications also have side effects, the importance of which must be judged on an individual basis. Individuals must be alerted to the hazards of these medications while driving. Side effects of somnolence or syncope are particularly undesirable in commercial drivers.

Secondary hypertension is based on the above stages.

Epilepsy
§391.41(b)(8)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle.

Epilepsy is a chronic functional disease characterized by seizures or episodes that occur without warning, resulting in loss of voluntary control which may lead to loss of consciousness and/or seizures. Therefore, the following drivers cannot be qualified: (1) a driver who has a medical history of epilepsy; (2) a driver who has a current clinical diagnosis of epilepsy; or (3) a driver who is taking antiseizure medication.

If an individual has had a sudden episode of a nonepileptic seizure or loss of consciousness of unknown cause which did not require antiseizure medication, the decision as to whether that person's condition will likely cause loss of consciousness or loss of ability to control a motor vehicle is made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6 month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and antiseizure medication is not required, then the driver may be qualified.

In those individual cases where a driver has a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition and has no existing residual complications, and not taking antiseizure medication.

Drivers with a history of epilepsy/seizures off antiseizure medication **and** seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free **and** off antiseizure medication for a 5-year period or more.
(See Conference on Neurological Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Mental Disorders
§391.41(b)(9)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no mental, nervous, organic or functional disease or psychiatric disorder likely to interfere with ability to drive a motor vehicle safely.

Emotional or adjustment problems contribute directly to an individual's level of memory, reasoning, attention, and judgment. These problems often underlie physical disorders. A variety of functional disorders can cause drowsiness, dizziness, confusion, weakness or paralysis that may lead to incoordination, inattention, loss of functional control and susceptibility to accidents while driving. Physical fatigue, headache, impaired coordination, recurring physical ailments and chronic "nagging" pain may be present to such a degree that certification for commercial driving is inadvisable. Somatic and psychosomatic complaints should be thoroughly examined when determining an individual's overall fitness to drive. Disorders of a periodically incapacitating nature, even in the early stages of development, may warrant disqualification.

Many bus and truck drivers have documented that "nervous trouble" related to neurotic, personality, or emotional or adjustment problems is responsible for a significant fraction of their preventable accidents. The degree to which an individual is able to appreciate, evaluate and adequately respond to environmental strain and emotional stress is critical when assessing an individual's mental alertness and flexibility to cope with the stresses of commercial motor vehicle driving.

When examining the driver, it should be kept in mind that individuals who live under chronic emotional upsets may have deeply ingrained maladaptive or erratic behavior patterns. Excessively antagonistic, instinctive, impulsive, openly aggressive, paranoid or severely depressed behavior greatly interfere with the driver's ability to drive safely. Those individuals who are highly susceptible to frequent states of emotional instability (schizophrenia, affective psychoses, paranoia, anxiety or depressive neuroses) may warrant disqualification. Careful consideration should be given to the side effects and interactions of medications in the overall qualification determination. See Psychiatric Conference Report for specific recommendations on the use of medications and potential hazards for driving.
(See Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Vision
§391.41(b)(10)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has distant visual acuity of at least 20/40 (Snellen) in each eye with or without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70 degrees in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

The term "ability to recognize the colors of" is interpreted to mean if a person can recognize and distinguish among traffic control signals and devices showing standard red, green and amber, he or she meets the minimum standard, even though he or she may have some type of color perception deficiency. If certain color perception tests are administered, (such as Ishihara, Pseudoisochromatic, Yarn) and doubtful findings are discovered, a controlled test using signal red, green and amber may be employed to determine the driver's ability to recognize these colors.

Contact lenses are permissible if there is sufficient evidence to indicate that the driver has good tolerance and is well adapted to their use. Use of a contact lens in one eye for distance visual acuity and another lens in the other eye for near vision is not acceptable, nor telescopic lenses acceptable for the driving of commercial motor vehicles.

If an individual meets the criteria by the use of glasses or contact lenses, the following statement shall appear on the Medical Examiner's Certificate: "Qualified only if wearing corrective lenses."

CMV drivers who do not meet the Federal vision standard may call (202) 366-1790 for an application for a vision exemption.
(See Visual Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Hearing
§391.41(b)(11)
A person is physically qualified to drive a commercial motor vehicle if that person:
First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid, or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ADA Standard) Z24.5-1951.

Since the prescribed standard under the FMCSRs is the American Standards Association (ANSI), it may be necessary to convert the audiometric results from the ISO standard to the ANSI standard. Instructions are included on the Medical Examination report form.

If an individual meets the criteria by using a hearing aid, the driver must wear that hearing aid and have it in operation at all times while driving. Also, the driver must be in possession of a spare power source for the hearing aid.

For the whispered voice test, the individual should be stationed at least 5 feet from the examiner with the ear being tested turned toward the examiner. The other ear is covered. Using the breath which remains after a normal expiration, the examiner whispers words or random numbers such as 66, 18,

23, etc. The examiner should not use only sibilants (s sounding materials). The opposite ear should be tested in the same manner. If the individual fails the whispered voice test, the audiometric test should be administered.

If an individual meets the criteria by the use of a hearing aid, the following statement must appear on the Medical Examiner's Certificate "Qualified only when wearing a hearing aid." (See Hearing Disorders and Commercial Motor Vehicle Drivers at: http://www/fmcsa.dot.gov/rulesregs/medreports.htm)

Drug Use
§391.41(b)(12)
A person is physically qualified to drive a commercial motor vehicle if that person does not use any drug or substance identified in 21 CFR 1308.11, an amphetamine, a narcotic, or other habit-forming drug. A driver may use a non-Schedule I drug or substance that is identified in the other Schedules in 21 part 1308 if the substance or drug is prescribed by a licensed medical practitioner who: (A) is familiar with the driver's medical history, and assigned duties; and (B) has advised the driver that the prescribed substance or drug will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

This exception does not apply to methadone. The intent of the medical certification process is to medically evaluate a driver to ensure that the driver has no medical condition which interferes with the safe performance of driving tasks on a public road. If a driver uses an amphetamine, a narcotic or any other habit-forming drug, it may be cause for the driver to be found medically unqualified. If a driver uses a Schedule I drug or substance, it will be cause for the driver to be found medically unqualified. Motor carriers are encouraged to obtain a practitioner's written statement about the effects on transportation safety of the use of a particular drug.

A test for controlled substances is not required as part of this biennial certification process. The FMCSA or the driver's employer should be contacted directly for information on controlled substances and alcohol testing under Part 382 of the FMCSRs.

The term "uses" is designed to encompass instances of prohibited drug use determined by a physician through established medical means. This may or may not involve body fluid testing. If body fluid testing takes place, positive test results should be confirmed by a second test of greater specificity. The term "habit-forming" is intended to include any drug or medication generally recognized as capable of becoming habitual, and which may impair the user's ability to operate a commercial motor vehicle safely.

The driver is medically unqualified for the duration of the prohibited drug(s) use and until a second examination shows the driver is free from the prohibited drug(s) use. Recertification may involve a substance abuse evaluation, the successful completion of a drug rehabilitation program, and a negative drug test result. Additionally, given that the certification period is normally two years, the examiner has the option to certify for a period of less than 2 years if this examiner determines more frequent monitoring is required.
(See Conference on Neurological Disorders and Commercial Drivers and Conference on Psychiatric Disorders and Commercial Drivers at:
http://www.fmcsa.dot.gov/rulesregs/medreports.htm)

Alcoholism
§391.41(b)(13)
A person is physically qualified to drive a commercial motor vehicle if that person:
Has no current clinical diagnosis of alcoholism.

The term "current clinical diagnosis of" is specifically designed to encompass a current alcoholic illness or those instances where the individual's physical condition has not fully stabilized, regardless of the time element. If an individual shows signs of having an alcohol-use problem, he or she should be referred to a specialist. After counseling and/or treatment, he or she may be considered for certification.

* * * * *

Issued on: January 18, 2012.

Anne S. Ferro,
Administrator.

[FR Doc. 2012–1905 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–EX–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2011–0109; 4500030113]

RIN 1018–AY34

Endangered and Threatened Wildlife and Plants; Reissuance of Interim Special Rule for the Polar Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On November 18, 2011, the United States District Court for the District of Columbia (Court) issued an order in regard to Misc. No. 08–764 (EGS) MDL Docket No. 1993 IN RE: POLAR BEAR ENDANGERED SPECIES ACT LISTING AND § 4(d) RULE LITIGATION, vacating and remanding to the U.S. Fish and Wildlife Service the December 16, 2008, final special rule for the polar bear (73 FR 76249). The Court further ordered that in its place the interim final special rule for the polar bear published on May 15, 2008 (73 FR 28306), shall remain in effect until superseded by the new special rule for the polar bear to be published in the **Federal Register**. This rule complies with that order and provides final notice of the reinstatement of the May 15, 2008, interim final special rule for the polar bear.

DATES: This action is effective January 30, 2012.

ADDRESSES: The interim final special rule is available on the Internet at *http://www.regulations.gov.* It will also be available for inspection, by appointment, during normal business hours at the Marine Mammal Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska; telephone (907) 786–3800.

FOR FURTHER INFORMATION CONTACT: For information on the polar bear and its habitat see *http://alaska.fws.gov/fisheries/mmm/polarbear/esa.htm* or contact U.S. Fish and Wildlife Service, Marine Mammals Management (see **ADDRESSES**) or telephone (907) 786–3800. Individuals who are hearing impaired or speech-impaired may call the Federal Relay Service at 1–(800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2008, we, the U.S. Fish and Wildlife Service (Service), published a final rule listing the polar bear (*Ursus maritimus*) as a threatened species throughout its range under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (ESA) (73 FR 28212). At the same time the Service published this listing rule, we also published an interim final special rule for the polar bear under authority of section 4(d) of the ESA that provides measures that are necessary and advisable for the conservation of the polar bear; this interim rule was later finalized on December 16, 2008 (73 FR 76249). Lawsuits challenging both the May 15, 2008, listing of the polar bear and the December 16, 2008, final special rule for the polar bear were filed in various federal district courts. These lawsuits were consolidated before the Court.

On October 17, 2011, the U.S. District Court for the District of Columbia found the Service violated the National Environmental Policy Act (NEPA) and the Administrative Procedure Act by failing to conduct a NEPA analysis for its December 16, 2008, final special rule for the polar bear. The Court ordered the final special rule vacated and set aside pending resolution of a timetable for NEPA review. On November 18, 2011, the Court resolved the schedule for NEPA review and vacated the December 16, 2008, final special rule (*Ctr. for Biological Diversity, et al.* v. *Salazar, et al.,* No. 08–2113; *Defenders of Wildlife* v. *U.S. Dep't of the Interior, et al.,* No. 09–153, Misc. No. 08–764 (EGS) MDL Docket No. 1993). In vacating and remanding to the U.S. Fish and Wildlife Service the December 16, 2008, final special rule for the polar bear (73 FR 76249), the Court further ordered that, in its place, the interim final special rule for the polar bear published on May 15, 2008 (73 FR 28306), shall remain in effect until superseded by the new special rule for the polar bear to be published in the **Federal Register**. This rule revises the Code of Federal Regulations to reflect the November 18, 2011, court order and is effective today. However, the court order reinstating the May 15, 2008, interim final special rule for the polar bear had legal effect immediately; as a result the interim final special rule has been in effect since November 18, 2011.

The interim final special rule provides that if an activity is authorized or exempted under the Marine Mammal Protection Act (MMPA) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Service would not require any additional authorization under the Service's regulations to conduct the activity. However, if the activity is not authorized or exempted under the MMPA or CITES and the activity would result in an act that would be otherwise prohibited under 50 CFR 17.31, the prohibitions of § 17.31 apply and the Service would require authorization under 50 CFR 17.32. In addition, otherwise lawful activities within the United States (except for Alaska) that cause incidental take of polar bears are exempt from the provisions of § 17.31.

Administrative Procedure

This rulemaking is necessary to comply with the October 17, 2011, and November 18, 2011, U.S. District Court for the District of Columbia orders. Therefore, under these circumstances, the Director has determined, pursuant to 5 U.S.C. 553(b)(3)(B), that prior notice and opportunity for public comment are impractical and unnecessary. The Director has further determined, pursuant to 5 U.S.C. 553(d)(3), that the agency has good cause to make this rule effective upon publication.

Effects of the Rule

As of November 18, 2011, the interim final rule for the polar bear published on May 15, 2008 (73 FR 28306), is reinstated throughout the species' range (50 CFR 17.40(q)). Please see the above-cited **Federal Register** publications for more detailed information regarding the polar bear listing and the special rule. This rule does not affect the critical habitat designation for the polar bear that became effective January 6, 2011 (75 FR 76086, December 7, 2010). Moreover, this rule will not affect the status of the polar bear under State laws or suspend any other legal protections provided by State law.

Lists of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, in order to comply with the court orders discussed above, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.40 by revising paragraph (q) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(q) Polar bear (*Ursus maritimus*).

(1) Except as noted in paragraphs (2) and (4) of subsection (q) of this section, all prohibitions and provisions of §§ 17.31 and 17.32 of this part apply to the polar bear.

(2) None of the prohibitions in § 17.31 of this part apply to any activity conducted in a manner that is consistent with the requirements of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 *et seq.,* and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), provided that the person carrying out the activity has complied with all terms and conditions that apply to that activity under the provisions of the MMPA and CITES and their implementing regulations.

(3) All applicable provisions of 50 CFR parts 14, 18, and 23 must be met.

(4) None of the prohibitions in § 17.31 of this part apply to any taking of polar bears that is incidental to, but not the purpose of, carrying out an otherwise lawful activity within any area subject to the jurisdiction of the United States except Alaska.

Dated: January 19, 2012.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–1914 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110831547–1736–02]

RIN 0648–BB26

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic Region; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to a final rule published in the **Federal Register** on December 30, 2011, to implement the Comprehensive Ecosystem-Based Amendment 2 (CE–BA 2) for the South Atlantic region. The final rule adds Appendix E to part 622, however, a final rule to implement Caribbean actions, published in the **Federal Register** on the same day (December 30, 2011), also adds an Appendix E to part 622. This rule corrects the final rule for CE–BA2 by removing ''Appendix E'' wherever it occurs, and adding in its place ''Appendix F.'' This rule also renumbers footnote 7 in Table 1 as footnote 5.

DATES: Effective January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Anik Clemens, telephone: (727) 824–5305, email: *Anik.Clemens@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In final rule FR Doc. 2011–33300, published in the **Federal Register** issue of December 30, 2011 (76 FR 82183), ''Appendix E'' is removed and ''Appendix F'' is added in its place in 19 places, footnote 7 is removed and footnote 5 is added in its place, and the amendatory instructions are renumbered. Therefore, the regulatory text is republished in its entirety.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator for Fisheries, NOAA, finds good cause to waive prior notice and opportunity for additional public comment for this action because any delay of this action would be unnecessary and contrary to the public interest. This correction notice includes minor, non-substantive changes to regulatory text. These corrections do not modify, add or remove any rights, privileges or obligations of any individuals. There will be no adverse affect on fishing stocks as a result of this notice. The corrections included in this notice are the renumbering of a footnote, the renaming of an Appendix, and the renumbering of the amendatory instructions published in the final rule. The final rule implementing CE–BA2 will be effective on January 30, 2012, and this correction notice, if published on or before January 30, 2012, will correct these errors upon effectiveness of the final rule. Because these are minor technical corrections, public comment is both unnecessary and contrary to the public interest.

For the reasons stated above, the Assistant Administrator also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in effective date for this correction notice.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are inapplicable.

This correction notice is exempt from review under Executive Order 12866.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: January 25, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 622 is correctly amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, paragraph (b), Table 1:

■ a. The entry for ''FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region'' is revised.

■ b. Footnote 5 is added.

■ c. Footnote 7, as added at 76 FR 82186, December 30, 2011, is removed.

The revisions and additions read as follows:

§ 622.1 Purpose and scope.

* * * * *

(b) * * *

TABLE 1—FMPS IMPLEMENTED UNDER PART 622

FMP title	Responsible fishery management council(s)	Geographical area
* * *	* * *	* * *
FMP for Coral, Coral Reefs, and Live/Hard Bottom Habitats of the South Atlantic Region.	SAFMC	South Atlantic.[5]
* * *	* * *	* * *

[5] Octocorals are managed by the FMP or regulated by this part only in the EEZ off North Carolina, South Carolina, and Georgia.

■ 3. In § 622.10, paragraphs (c)(1)(ii) and (iii), are revised to read as follows:

§ 622.10 Conservation measures for protected resources.

* * * * *

(c) * * *

(1) * * *

(ii) Such owner or operator must also comply with the sea turtle bycatch mitigation measures, including gear requirements and sea turtle handling requirements, specified in Appendix F to this part.

(iii) Those permitted vessels with a freeboard height of 4 ft (1.2 m) or less must have on board and must use a dipnet, cushioned/support device, short-handled dehooker, long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix F to this part. Those permitted vessels with a freeboard height of greater than 4 ft (1.2 m) must have on board a dipnet, cushioned/support device, long-handled line clipper, a short-handled and a long-handled dehooker, a long-handled device to pull an inverted ''V'', long-nose or needle-nose pliers, bolt cutters, monofilament line cutters, and at least two types of mouth openers/mouth gags. This equipment must meet the specifications described in Appendix F to this part.

* * * * *

■ 4. In § 622.32, paragraph (b)(3)(viii), as added at 76 FR 82186, December 30, 2011, is revised to read as follows:

§ 622.32 Prohibited and limited harvest species.

* * * * *

(b) * * *

(3) * * *

(viii) Octocoral may not be harvested or possessed in or from the portion of the South Atlantic EEZ managed under the FMP. Octocoral collected in the portion of the South Atlantic EEZ managed under the FMP must be released immediately with a minimum of harm.

* * * * *

■ 5. In § 622.35, in paragraph (e)(2), the first entry in the table is revised to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(2) * * *

In SMZs specified in the following paragraphs of § 622.35	These restrictions apply
(e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix).	Use of a powerhead to take South Atlantic snapper-grouper is prohibited. Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a coastal migratory pelagic fish or a South Atlantic snapper-grouper is limited to the bag-limits specified in § 622.39(c)(1) and (d)(1), respectively.
* * *	* * *

■ 6. In § 622.42, paragraph (b) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(b) *Gulf allowable octocoral.* The quota for all persons who harvest allowable octocoral in the Gulf EEZ is 50,000 colonies. A colony is a continuous group of coral polyps forming a single unit.

* * * * *

■ 7. Appendix E to Part 622, as added at 76 FR 82186, December 30, 2011, is redesignated as Appendix F to Part 622 and revised to read as follows:

Appendix F to Part 622—Specifications for Sea Turtle Mitigation Gear and Sea Turtle Handling and Release Requirements

A. *Sea turtle mitigation gear.*

1. *Long-handled line clipper or cutter.* Line cutters are intended to cut high test monofilament line as close as possible to the hook, and assist in removing line from entangled sea turtles to minimize any remaining gear upon release. NMFS has established minimum design standards for the line cutters. The LaForce line cutter and the Arceneaux line clipper are models that meet these minimum design standards, and may be purchased or fabricated from readily available and low-cost materials. One long-handled line clipper or cutter and a set of replacement blades are required to be onboard. The minimum design standards for line cutters are as follows:

(a) *A protected and secured cutting blade.* The cutting blade(s) must be capable of cutting 2.0–2.1 mm (0.078 in.–0.083 in.) monofilament line (400-lb test) or polypropylene multistrand material, known as braided or tarred mainline, and must be maintained in working order. The cutting blade must be curved, recessed, contained in a holder, or otherwise designed to facilitate its safe use so that direct contact between the cutting surface and the sea turtle or the user is prevented. The cutting instrument must be securely attached to an extended reach handle and be easily replaceable. One extra set of replacement blades meeting these standards must also be carried on board to replace all cutting surfaces on the line cutter or clipper.

(b) *An extended reach handle.* The line cutter blade must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or a minimum

of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. There is no restriction on the type of material used to construct this handle as long as it is sturdy and facilitates the secure attachment of the cutting blade.

2. *Long-handled dehooker for internal hooks.* A long-handled dehooking device is intended to remove internal hooks from sea turtles that cannot be boated. It should also be used to engage a loose hook when a turtle is entangled but not hooked, and line is being removed. The design must shield the barb of the hook and prevent it from re-engaging during the removal process. One long-handled device to remove internal hooks is required onboard. The minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel or similar material and have a dehooking end no larger than 1 7/8 inches (4.76 cm) outside diameter. The device must securely engage and control the leader while shielding the barb to prevent the hook from re-engaging during removal. It may not have any unprotected terminal points (including blunt ones), as these could cause injury to the esophagus during hook removal. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The dehooking end must be securely fastened to an extended reach handle or pole with a minimum length equal to or greater than 150 percent of the freeboard, or a minimum of 6 ft (1.83 m), whichever is greater. It is recommended, but not required, that the handle break down into sections. The handle must be sturdy and strong enough to facilitate the secure attachment of the hook removal device.

3. *Long-handled dehooker for external hooks.* A long-handled dehooker is required for use on externally-hooked sea turtles that cannot be boated. The long-handled dehooker for internal hooks described in paragraph 2. of this Appendix F would meet this requirement. The minimum design standards are as follows:

(a) *Construction.* A long-handled dehooker must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel rod and have a dehooking end no larger than 1 7/8-inches (4.76 cm) outside diameter. The design should be such that a fish hook can be rotated out, without pulling it out at an angle. The dehooking end must be blunt with all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Extended reach handle.* The handle must be a minimum length equal to the freeboard of the vessel or 6 ft (1.83 m), whichever is greater.

4. *Long-handled device to pull an ''inverted V''.* This tool is used to pull a ''V'' in the fishing line when implementing the ''inverted V'' dehooking technique, as described in the document entitled ''Careful Release Protocols for Sea Turtle Release With Minimal Injury,'' for disentangling and dehooking entangled sea turtles. One long-handled device to pull an ''inverted V'' is required onboard. If a 6-ft (1.83 m) J-style dehooker is used to comply with paragraph 4. of this Appendix F, it will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook end.* This device, such as a standard boat hook, gaff, or long-handled J-style dehooker, must be constructed of stainless steel or aluminum. The semicircular or ''J'' shaped end must be securely attached to a handle. A sharp point, such as on a gaff hook, is to be used only for holding the monofilament fishing line and should never contact the sea turtle.

(b) *Extended reach handle.* The handle must have a minimum length equal to the freeboard of the vessel, or 6 ft (1.83 m), whichever is greater. The handle must be sturdy and strong enough to facilitate the secure attachment of the gaff hook.

5. *Dipnet.* One dipnet is required onboard. Dipnets are to be used to facilitate safe handling of sea turtles by allowing them to be brought onboard for fishing gear removal, without causing further injury to the animal. Turtles must not be brought onboard without the use of a dipnet or hoist. The minimum design standards for dipnets are as follows:

(a) *Size of dipnet.* The dipnet must have a sturdy net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm) to accommodate turtles below 3 ft (0.914 m) carapace length. The bag mesh openings may not exceed 3 inches (7.62 cm) by 3 inches (7.62 cm). There must be no sharp edges or burrs on the hoop, or where it is attached to the handle. There is no requirement for the hoop to be circular as long as it meets the minimum specifications.

(b) *Extended reach handle.* The dipnet hoop must be securely fastened to an extended reach handle or pole with a minimum length equal to, or greater than, 150 percent of the freeboard, or at least 6 ft (1.83 m), whichever is greater. The handle must be made of a rigid material strong enough to facilitate the sturdy attachment of the net hoop and be able to support a minimum of 100 lb (34.1 kg) without breaking or significant bending or distortion. It is recommended, but not required, that the extended reach handle break down into sections.

6. *Cushion/support device.* A standard automobile tire (free of exposed steel belts), a boat cushion, a large turtle hoist, or any other comparable cushioned elevated surface, is required for supporting a turtle in an upright orientation while the turtle is onboard. The cushion/support device must be appropriately sized to fully support a range of turtle sizes.

7. *Short-handled dehooker for internal hooks.* One short-handled device for removing internal hooks is required onboard. This dehooker is designed to remove ingested hooks from boated sea turtles. It can also be used on external hooks or hooks in the front of the mouth. Minimum design standards are as follows:

(a) *Hook removal device.* The hook removal device must be constructed of approximately 3/16-inch (4.76 mm) to 5/16-inch (7.94 mm) 316 L stainless steel, and must allow the hook to be secured and the barb shielded without re-engaging during the removal process. It must be no larger than 1 7/8 inches (4.76 cm) outside diameter. It may not have any unprotected terminal points (including blunt ones), as this could cause injury to the esophagus during hook removal. A sliding PVC bite block must be used to protect the beak and facilitate hook removal if the turtle bites down on the dehooking device. The bite block should be constructed of a 3/4-inch (1.91 cm) inside diameter high impact plastic cylinder (e.g., Schedule 80 PVC) that is 4 to 6 inches (10.2 to 15.2 cm) long to allow for 5 inches (12.7 cm) of slide along the shaft. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 cm to 60.69 cm) in length, with approximately a 4 to 6-inch (10.2 to 15.2-cm) long tube T-handle of approximately 1 inch (2.54 cm) in diameter.

8. *Short-handled dehooker for external hooks.* One short-handled dehooker for external hooks is required onboard. The short-handled dehooker for internal hooks required to comply with paragraph 7. of this Appendix F will also satisfy this requirement. Minimum design standards are as follows:

(a) *Hook removal device.* The dehooker must be constructed of approximately 3/16-inch (4.76 cm) to 5/16-inch (7.94 cm) 316 L stainless steel, and the design must be such that a hook can be rotated out without pulling it out at an angle. The dehooking end must be blunt, and all edges rounded. The device must be of a size appropriate to secure the range of hook sizes and styles used in the South Atlantic snapper-grouper fishery.

(b) *Handle length.* The handle should be approximately 16 to 24 inches (40.64 to 60.69 cm) long with approximately a 5-inch (12.7 cm) long tube T-handle, wire loop handle or similar, of approximately 1 inch (2.54 cm) in diameter.

9. *Long-nose or needle-nose pliers.* One pair of long-nose or needle-nose pliers is required on board. Required long-nose or needle-nose pliers can be used to remove deeply embedded hooks from the turtle's flesh that must be twisted during removal or for removing hooks from the front of the mouth. They can also hold PVC splice couplings, when used as mouth openers, in place. Minimum design standards are as follows:

(a) *General.* They must be approximately 12 inches (30.48 cm) in length, and should be constructed of stainless steel material.

(b) [Reserved]

10. *Bolt cutters.* One pair of bolt cutters is required on board. Required bolt cutters may be used to cut hooks to facilitate their removal. They should be used to cut off the eye or barb of a hook, so that it can safely be pushed through a sea turtle without causing further injury. They should also be used to cut off as much of the hook as possible, when the remainder of the hook cannot be removed. Minimum design standards are as follows:

(a) *General.* They must be approximately 14 to 17 inches (35.56 to 43.18 cm) in total

length, with approximately 4-inch (10.16 cm) long blades that are 2¼ inches (5.72 cm) wide, when closed, and with approximately 10- to 13-inch (25.4 to 33.02-cm) long handles. Required bolt cutters must be able to cut hard metals, such as stainless or carbon steel hooks, up to ¼-inch (6.35 mm) diameter.

(b) [Reserved]

11. *Monofilament line cutters.* One pair of monofilament line cutters is required on board. Required monofilament line cutters must be used to remove fishing line as close to the eye of the hook as possible, if the hook is swallowed or cannot be removed. Minimum design standards are as follows:

(a) *General.* Monofilament line cutters must be approximately 7½ inches (19.05 cm) in length. The blades must be 1 inch (4.45 cm) in length and ⅝ inches (1.59 cm) wide, when closed.

(b) [Reserved]

12. *Mouth openers/mouth gags.* Required mouth openers and mouth gags are used to open sea turtle mouths, and to keep them open when removing internal hooks from boated turtles. They must allow access to the hook or line without causing further injury to the turtle. Design standards are included in the item descriptions. At least two of the seven different types of mouth openers/gags described below are required:

(a) *A block of hard wood.* Placed in the corner of the jaw, a block of hard wood may be used to gag open a turtle's mouth. A smooth block of hard wood of a type that does not splinter (e.g. maple) with rounded edges should be sanded smooth, if necessary, and soaked in water to soften the wood. The dimensions should be approximately 11 inches (27.94 cm) by 1 inch (2.54 cm) by 1 inch (2.54 cm). A long-handled, wire shoe brush with a wooden handle, and with the wires removed, is an inexpensive, effective and practical mouth-opening device that meets these requirements.

(b) *A set of three canine mouth gags.* Canine mouth gags are highly recommended to hold a turtle's mouth open, because the gag locks into an open position to allow for hands-free operation after it is in place. These tools are only for use on small and medium sized turtles, as larger turtles may be able to crush the mouth gag. A set of canine mouth gags must include one of each of the following sizes: small (5 inches) (12.7 cm), medium (6 inches) (15.24 cm), and large (7 inches) (17.78 cm). They must be constructed of stainless steel. The ends must be covered with clear vinyl tubing, friction tape, or similar, to pad the surface.

(c) *A set of two sturdy dog chew bones.* Placed in the corner of a turtle's jaw, canine chew bones are used to gag open a sea turtle's mouth. Required canine chews must be constructed of durable nylon, zylene resin, or thermoplastic polymer, and strong enough to withstand biting without splintering. To accommodate a variety of turtle beak sizes, a set must include one large (5½–8 inches (13.97 cm–20.32 cm) in length), and one small (3½–4½ inches (8.89 cm–11.43 cm) in length) canine chew bones.

(d) *A set of two rope loops covered with protective tubing.* A set of two pieces of poly braid rope covered with light duty garden hose or similar flexible tubing each tied or spliced into a loop to provide a one-handed method for keeping the turtle's mouth open during hook and/or line removal. A required set consists of two 3-ft (0.91 m) lengths of poly braid rope (⅜-inch (9.52 mm) diameter suggested), each covered with an 8-inch (20.32 cm) section of ½ inch (1.27 cm) or ¾ inch (1.91 cm) tubing, and each tied into a loop. The upper loop of rope covered with hose is secured on the upper beak to give control with one hand, and the second piece of rope covered with hose is secured on the lower beak to give control with the user's foot.

(e) *A hank of rope.* Placed in the corner of a turtle's jaw, a hank of rope can be used to gag open a sea turtle's mouth. A 6-ft (1.83 m) lanyard of approximately 3/16-inch (4.76 mm) braided nylon rope may be folded to create a hank, or looped bundle, of rope. Any size soft-braided nylon rope is allowed, however it must create a hank of approximately 2–4 inches (5.08 cm–10.16 cm) in thickness.

(f) *A set of four PVC splice couplings.* PVC splice couplings can be positioned inside a turtle's mouth to allow access to the back of the mouth for hook and line removal. They are to be held in place with the needle-nose pliers. To ensure proper fit and access, a required set must consist of the following Schedule 40 PVC splice coupling sizes: 1 inch (2.54 cm), 1¼ inch (3.18 cm), 1½ inch (3.81 cm), and 2 inches (5.08 cm).

(g) *A large avian oral speculum.* A large avian oral speculum provides the ability to hold a turtle's mouth open and to control the head with one hand, while removing a hook with the other hand. The avian oral speculum must be 9 inches (22.86 cm) long, and constructed of 3/16-inch (4.76 mm) wire diameter surgical stainless steel (Type 304). It must be covered with 8 inches (20.32 cm) of clear vinyl tubing (5/16-inch (7.9 mm) outside diameter, 3/16-inch (4.76 mm) inside diameter), friction tape, or similar to pad the surface.

B. *Sea turtle handling and release requirements.* Sea turtle bycatch mitigation gear, as specified in paragraphs A.1. through 4. of this Appendix F, must be used to disengage any hooked or entangled sea turtles that cannot be brought onboard. Sea turtle bycatch mitigation gear, as specified in paragraphs A.5. through 12. of this Appendix F, must be used to facilitate access, safe handling, disentanglement, and hook removal or hook cutting of sea turtles that can be brought onboard, where feasible. Sea turtles must be handled, and bycatch mitigation gear must be used, in accordance with the careful release protocols and handling/release guidelines specified in § 622.10(c)(1), and in accordance with the onboard handling and resuscitation requirements specified in § 223.206(d)(1)of this title.

1. *Boated turtles.* When practicable, active and comatose sea turtles must be brought on board, with a minimum of injury, using a dipnet as specified in paragraph A.5. of this Appendix F. All turtles less than 3 ft (.91 m) carapace length should be boated, if sea conditions permit.

(a) A boated turtle should be placed on a cushioned/support device, as specified in paragraph A.6. of this Appendix F, in an upright orientation to immobilize it and facilitate gear removal. Then, it should be determined if the hook can be removed without causing further injury. All externally embedded hooks should be removed, unless hook removal would result in further injury to the turtle. No attempt to remove a hook should be made if it has been swallowed and the insertion point is not visible, or if it is determined that removal would result in further injury. If a hook cannot be removed, as much line as possible should be removed from the turtle using monofilament cutters as specified in paragraph A.11. of this Appendix F, and the hook should be cut as close as possible to the insertion point before releasing the turtle, using bolt cutters as specified in paragraph A.10. of this Appendix F. If a hook can be removed, an effective technique may be to cut off either the barb, or the eye, of the hook using bolt cutters, and then to slide the hook out. When the hook is visible in the front of the mouth, a mouth-opener, as specified in paragraph A.12. of this Appendix F, may facilitate opening the turtle's mouth and a gag may facilitate keeping the mouth open. Short-handled dehookers for internal hooks, or long-nose or needle-nose pliers, as specified in paragraphs A.7. and A.8. of this Appendix F, respectively, should be used to remove visible hooks from the mouth that have not been swallowed on boated turtles, as appropriate. As much gear as possible must be removed from the turtle without causing further injury prior to its release. Refer to the careful release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) of this title, for additional information.

(b) [Reserved]

2. *Non-boated turtles.* If a sea turtle is too large, or hooked in a manner that precludes safe boating without causing further damage or injury to the turtle, sea turtle bycatch mitigation gear specified in paragraphs A.1. through 4. of this Appendix F must be used to disentangle sea turtles from fishing gear and disengage any hooks, or to clip the line and remove as much line as possible from a hook that cannot be removed, prior to releasing the turtle, in accordance with the protocols specified in § 622.10(c)(1).

(a) Non-boated turtles should be brought close to the boat and provided with time to calm down. Then, it must be determined whether or not the hook can be removed without causing further injury. All externally embedded hooks must be removed, unless hook removal would result in further injury to the turtle. No attempt should be made to remove a hook if it has been swallowed, or if it is determined that removal would result in further injury. If the hook cannot be removed and/or if the animal is entangled, as much line as possible must be removed prior to release, using a line cutter as specified in paragraph A.1. of this Appendix F. If the hook can be removed, it must be removed using a long-handled dehooker as specified in paragraphs A.2. and A.3. of this Appendix F. Without causing further injury, as much gear as possible must be removed from the turtle prior to its release. Refer to the careful

release protocols and handling/release guidelines required in § 622.10(c)(1), and the handling and resuscitation requirements specified in § 223.206(d)(1) for additional information.

(b) [Reserved]

[FR Doc. 2012–1943 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 19
Monday, January 30, 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.

FEDERAL TRADE COMMISSION

16 CFR Part 300

Rules and Regulations Under the Wool Products Labeling Act of 1939

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') systematically reviews all its rules and guides to ensure that they continue to achieve their intended purpose without unduly burdening commerce. As part of this systematic review, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of, and possible modifications to, the Rules and Regulations under the Wool Products Labeling Act of 1939 (''Wool Rules'' or ''Rules''). The Commission also seeks comment on how it should modify the Rules to implement the Wool Suit Fabric Labeling Fairness and International Standards Conforming Act, and on the costs and benefits of certain provisions of the Wool Products Labeling Act of 1939.

DATES: Comments must be submitted by March 26, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Wool Rules, 16 CFR part 300, Project No. P124201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/woolanpr* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, (202) 326–2098, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Wool Products Labeling Act of 1939 (''Wool Act''), 15 U.S.C. 68–68j, requires marketers to attach a label to each wool product disclosing: (1) The percentages by weight of the wool, recycled wool, and other fibers accounting for 5% or more of the product, and the aggregate of all other fibers; (2) the maximum percentage of the total weight of the wool product of any nonfibrous matter; (3) the name under which the manufacturer or other responsible company does business or, in lieu thereof, the registered identification number (''RN number'') of such company; and (4) the name of the country where the wool product was processed or manufactured.[1] The Wool Act also contains advertising and record-keeping provisions.

Additionally, the Wool Act authorizes the Commission to ''make rules and regulations for the manner and form of disclosing information required by this subchapter * * * and to make such further rules and regulations under and in pursuance of the terms of this subchapter as may be necessary and proper for administration and enforcement.'' [2] Pursuant to this provision, the Commission promulgated the Wool Rules.[3]

The Commission completed its last comprehensive review of the Rules in 1998, and modified the Rules twice in 1998 and again in 2000. Specifically, as a result of the 1998 review,[4] the Commission, among other things, streamlined the labeling requirements and incorporated the definition of ''trimmings'' set forth in § 303.12 of the Rules and Regulations Under the Textile Fiber Products Identification Act (''Textile Rules'').[5] Later in 1998, the Commission amended the Rules to update Commission addresses.[6] In 2000, it amended the Rules to clarify that the Commission will assign only one RN number to a qualified applicant and to clarify the country-of-origin disclosure requirements.[7] At that time the Commission also amended certain provisions of the Textile Rules that the Wool Rules incorporate. In particular, the Commission revised the RN number application process set forth in the Textile Rules and amended the Textile Rules to reference an updated version of International Organization for Standardization ISO 2076: 1999(E), ''Textiles—Man-Made Fibres—Generic Names,'' the standard currently set forth in § 303.7 of the Textile Rules.[8]

In 2006, Congress amended the Wool Act by passing the Wool Suit Fabric Labeling Fairness and International Standards Conforming Act (''Conforming Act'').[9] This legislation declared that specified wool products manufactured on or after January 1, 2007, including cashmere, are misbranded if the average diameter of their fibers does not meet certain standards. The Commission seeks comment on how it should modify the Wool Rules to implement the Conforming Act.

The Conforming Act sets the maximum average diameter for 18 different ''Super'' designations of wool products by average fiber diameter. For example, a wool product is misbranded if it is identified as ''Super 80's'' or ''80's'' unless the average diameter of the wool fibers in the product is 19.75 microns or finer.[10] The Conforming Act also authorizes the Commission to adopt additional standards or deviations for these wool products.[11]

[1] 15 U.S.C. 68b(a).

[2] 15 U.S.C. 68d(a).

[3] 16 CFR part 300.

[4] *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act, the Wool Products Labeling Act, and the Fur Products Labeling Act: Final Rule,* 63 FR 7508 (Feb. 13, 1998).

[5] 16 CFR part 303. The Wool Rules provide that the term ''trimmings'' has the meaning set forth in § 303.12 of the Textile Rules. 16 CFR 300.1(k).

[6] *Federal Trade Commission: Miscellaneous Rules: Final Rule,* 63 FR 71582 (Dec. 29, 1998).

[7] *Federal Trade Commission: Rules and Regulations Under the Textile Fiber Products Identification Act; Rules and Regulations Under the Wool Products Labeling Act of 1939, Final Rule,* 65 FR 75154 (Dec. 1, 2000).

[8] The Wool Rules provide that the application for RN numbers or to update information pertaining to existing RN numbers is found in § 303.20(d) of the Textile Rules. 16 CFR 300.4(e). The Wool Rules also provide that the generic names of manufactured fibers established in § 303.7 of the Textile Rules shall be used in disclosing fiber content. 16 CFR 300.8(b).

[9] Public Law 109–428 (Dec. 20, 2006), *codified* at 15 U.S.C. 68b(a)(5)–(6).

[10] 15 U.S.C. 68b(a)(5)(A).

[11] 15 U.S.C. 68b(a)(5). In addition, the Conforming Act provides that a product is misbranded as cashmere if: (1) It does not consist

II. Regulatory Review Program

Since 1992, the Commission has systematically reviewed its regulations to ensure that they continue to achieve their intended goals without unduly burdening commerce. The Commission schedules its regulations and guides for review on a ten-year cycle; *i.e.,* all rules and guides are scheduled to be reviewed ten years after implementation and ten years after the completion of each review. The Commission publishes this schedule annually, with adjustments in response to public input, changes in the marketplace, and resource demands.[12]

When the Commission reviews a rule or guide, it publishes a notice in the **Federal Register** seeking public comment on the continuing need for the rule or guide as well as its costs and benefits to consumers and businesses. Based on this feedback, the Commission may modify or repeal the rule or guide to address public concerns or changed conditions, or to reduce undue regulatory burden. As part of this process, the Commission now solicits comments on, among other things, the economic impact of, and the continuing need for, the Wool Rules; the benefits of the Rules to consumers; and the burdens the Rules place on business.[13]

III. Specific Issues of Interest to the Commission

As part of this process, the Commission seeks comment on several issues. Specifically, the Commission seeks comment on whether it should clarify or modify certain Rule provisions and/or its business and consumer education materials to improve industry and consumer understanding of the Rules. Additionally, the Commission seeks comment on whether it could otherwise improve the Rules.[14] These issues are explained below, along with two other issues involving the benefits and costs of certain provisions of the Wool Act.[15]

First, some of the definitions in the Rules may warrant modification. For example, § 300.23 requires fiber content disclosures for certain trimmings, such as those containing or purporting to contain wool. Section 300.1(k) incorporates by reference the definition of ''trimmings'' from § 303.12 of the Textile Rules, which provides that trimmings may include elastic material added to a product in minor proportion for holding, reinforcing or similar structural purposes. However, § 303.12 of the Textile Rules lists product components or parts that may qualify as trim without otherwise defining the term ''trimmings.'' Moreover, neither the Wool Rules nor the Textile Rules define or elaborate on the term ''minor proportion.''

Second, the disclosure of fiber content percentages in multiple languages may warrant modification of the Rules or other action such as addressing the issue in business education materials. Section 300.7 requires label disclosures in English, but allows disclosures in other languages. However, § 300.10(b) provides that such ''non-required'' information ''shall not minimize, detract from, or conflict with required information and shall not be false, deceptive, or misleading.'' The Commission seeks comment on the voluntary practice of disclosing required information in multiple languages. In particular, the Commission seeks comment on whether voluntary multilingual labeling causes consumer confusion, and if so, how to avoid such confusion while maintaining the benefits of such disclosures.

Third, the Commission would benefit from comment on ways it might clarify or otherwise improve its consumer and business education materials to make them more useful and better ensure compliance with the Wool Act and Rules. Furthermore, comment on whether the Commission should continue to print paper copies of its consumer and business education materials could help the Commission allocate its resources more effectively.

In addition, comment on the benefits and costs of several Wool Act provisions could assist the Commission in its administration of the Wool program. The Commission is considering the benefits and costs of the requirement that businesses identify themselves on labels using either their names or identifiers issued by the FTC (*i.e.,* RN numbers).[16] Specifically, the Commission seeks comment on whether allowing alternative identifiers, such as numbers issued by other nations (*e.g.,* Canadian CA numbers), would benefit businesses without imposing undue costs on consumers and law enforcement.[17]

Finally, the Wool Act provides that no person shall be guilty of misbranding a wool product if he obtains a guaranty, received in good faith and signed by the manufacturer or supplier residing in the United States, that a wool product is not misbranded.[18] The Commission seeks comment on the extent to which retailers obtain guaranties and continuing guaranties under the Rules. The Commission also seeks comment on the costs of obtaining guaranties for wool products and whether changes in the extent and manner of importation indicate that the guaranty provisions of the Wool Act and Rules should be modified.

IV. Request for Comment

The Commission solicits comments on the following specific questions related to the Wool Rules.

(1) Is there a continuing need for the Rules as currently promulgated? Why or why not?

(2) What benefits have the Rules provided to, or what significant costs have the Rules imposed on, consumers? Provide any evidence supporting your position.

(3) What modifications, if any, should the Commission make to the Rules to increase their benefits or reduce their costs to consumers?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Provide any evidence supporting your proposed modifications.

(4) What impact have the Rules had in promoting the flow of truthful information to consumers and preventing the flow of deceptive information to consumers? Provide any evidence supporting your position.

(5) What benefits, if any, have the Rules provided to, or what significant

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of the fine (dehaired) undercoat fibers produced by a cashmere goat; (2) the average diameter of the fiber exceeds 19 microns; or (3) it contains more than 3% by weight of cashmere fibers with average diameters exceeding 30 microns. 15 U.S.C. 68b(a)(6)(A)—(C). Furthermore, the average fiber diameter for each cashmere product may be subject to a coefficient of variation around the mean that does not exceed 24 percent. 15 U.S.C. 68b(a)(6).

[12] *Federal Trade Commission: Notice Announcing Ten-year Regulatory Review Schedule and Request for Public Comment on the Federal Trade Commission's Regulatory Review Program,* 76 FR 41150 (Jul. 13, 2011).

[13] *See* questions 1 through 12 in Section IV below.

[14] In its review of the Textile Rules, the Commission has solicited comment on provisions of the Textile Rules that the Wool Rules incorporate. *Federal Trade Commission: Rules and Regulations under the Textile Fiber Products Identification Act: Advance Notice of Proposed Rulemaking; Request for Public Comment,* 76 FR 68690 at 68692 (Nov. 7, 2011). For example, the International Organization for Standardization developed ISO 2076: 2010, an updated version of ISO 2076: 1999(E), ''Textiles—Man-made fibres—Generic Names,'' referenced in § 303.7 of the Textile Rules and incorporated into the Wool Rules in 16 CFR 300.8(b). This development may warrant modifying § 303.7 to incorporate the updated version of ISO 2076, which would in turn affect disclosure requirements under the Wool Rules.

[15] The Commission sought comment on issues similar to those explained below in its review of the Textile Rules. *Id.*

[16] *See* 15 U.S.C. 68b(a)(2)(C) and 16 CFR 300.3(a)(3).

[17] *See* questions 13 through 19 in Section IV below.

[18] 15 U.S.C. 68g.

costs, including costs of compliance, have the Rules imposed on businesses, particularly small businesses? Provide any evidence supporting your position.

(6) What modifications, if any, should be made to the Rules to increase their benefits or reduce their costs to businesses, particularly small businesses?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Provide any evidence supporting your proposed modifications.

(7) Provide any evidence concerning the degree of industry compliance with the Rules. Does this evidence indicate that the Rules should be modified? If so, why and how? If not, why not?

(8) Provide any evidence concerning whether any of the Rules' provisions are no longer necessary. Explain why these provisions are unnecessary.

(9) What potentially unfair or deceptive practices concerning wool labeling, not covered by the Rules, are occurring in the marketplace?

(a) With reference to such practices, should the Rules be modified? If so, why and how? If not, why not?

(b) Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, demonstrating the extent of such practices.

(c) Provide any evidence demonstrating whether such practices cause consumer injury.

(10) What modifications, if any, should be made to the Rules to account for current or impending changes in technology or economic conditions?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Provide any evidence supporting the proposed modifications.

(11) Do the Rules overlap or conflict with other federal, state, or local laws or rules, such as those enforced by U.S. Customs and Border Protection? If so, how?

(a) With reference to the asserted conflicts, should the Rules be modified? If so, why and how? If not, why not?

(b) Have the Rules assisted in promoting national consistency with respect to wool labeling and advertising?

(c) Provide any evidence supporting your position.

(12) Are there foreign or international laws, regulations, or standards with respect to wool labeling or advertising that the Commission should consider as it reviews the Rules? If so, what are they?

(a) Should the Rules be modified in order to harmonize with these international laws, regulations, or standards? If so, why and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(c) Provide any evidence supporting your position.

(13) How should the Commission modify the Rules to address the amendments to the Wool Act set forth in the 2006 Wool Suit Fabric Labeling Fairness and International Standards Conforming Act?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Should the Commission adopt additional standards or deviations from average fiber diameters, or does the limited deviation for cashmere products as provided in the amendments adequately achieve the purpose of the amendments? If so, why? If not, why not? How should the Commission address this issue? How should any allowable deviations be determined or measured? Identify any tests or methodologies that the Commission should consider in addressing this issue.

(c) Provide any evidence supporting your proposed modifications.

(14) Should the Commission modify the Rules to add or clarify definitions of terms set forth in the Rules, such as the definition of ''trimmings'' in § 300.1(k), which incorporates by reference Section 303.12 of the Textile Rules? If so, why and how? If not, why not?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Provide any evidence supporting your position.

(15) Should the Commission modify Section 300.10 or consider any additional measures regarding non-required information such as the voluntary use of multilingual labels? In particular, do multilingual labels pose the potential to confuse consumers and, if so, how could such confusion be avoided while providing the benefits of disclosures in multiple languages?

(a) How would these modifications affect the costs and benefits of the Rules for consumers and businesses, particularly small businesses?

(b) Provide any evidence supporting your position.

(16) Is our business compliance guidance and consumer education about the Rules useful? Can it be improved? If so, how?

(a) Should the Commission consider consumer education or other measures to help non-English-speaking consumers obtain the information that must be disclosed under the Wool Act and Rules?

(b) Should the Commission print copies of consumer education materials, or is a downloadable pdf at *www.business.ftc.gov* sufficient for your needs?

(17) Regarding the requirement that businesses identify themselves on labels using either their names or identifiers issued by the FTC, what are the benefits and costs to consumers and businesses of allowing businesses to use alternative identifiers, such as numbers issued by other nations? Provide any evidence supporting your position.

(18) To what extent do retailers obtain valid separate or continuing guaranties that comply with the requirements of the Wool Act and Rules, *i.e.,* guaranties signed by a person residing in the United States and, in the case of continuing guaranties, signed under the penalty of perjury?

(a) Do retailers who obtain such guaranties obtain them for all, most, some, or few of the wool products they sell?

(b) Why do retailers decline to obtain such guaranties?

(c) Have changes in technology, such as the use of electronic documents, affected the ability of retailers to obtain valid separate or continuing guaranties? If so, why and how? If not, why not?

(d) Provide any evidence supporting your position.

(19) How many and what proportion of wool products sold in the U.S. are imported? How many and what proportion of imported products are imported directly by retailers, including products shipped to consumers directly from foreign sources after the consumers purchase them online from U.S. retailers? What proportion are imported by businesses located in the United States for resale or distribution to retailers? How have these proportions changed since the Wool Act and Rules became effective?

(a) Have changes in the extent or manner in which wool products are imported affected the ability of retailers to obtain valid separate or continuing guaranties? If so, does the ability of retailers to obtain such guaranties differ depending on whether the wool products are imported directly by retailers versus imported by businesses for resale or distribution to retailers?

(b) Identify and explain the costs of obtaining valid guaranties for imported

wool products and the impact of such costs on the ability of retailers to obtain valid guaranties.

(c) Do the costs or difficulty of obtaining guaranties for imported wool products create a problem for retailers? If so, why and how? If not, why not?

(d) Do changes in the extent or manner in which wool products are imported indicate that the Wool Act and Rules should be modified? If so, why and how? If not, why not?

(e) Provide any evidence supporting your position.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 26, 2012. Write ''Wool Rules, 16 CFR part 300, Project No. P124201'' on your comment. Your comment B including your name and your state B will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually-identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don't include competitively-sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[19] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/woolanpr* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Wool Rules, 16 CFR Part 300, Project No. P124201'' on your comment and on the envelope and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 26, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–1862 Filed 1–27–12; 8:45 am]

BILLING CODE 6750–01–P

[19] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[Docket No. USCG–2011–0551]

RIN 1625–AA00; 1625–AA08

Special Local Regulation and Safety Zone; America's Cup Sailing Events, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking and public meetings.

SUMMARY: The Coast Guard proposes to adopt a temporary special local regulation and temporary safety zone for those portions of the ''America's Cup World Series,'' the ''Louis Vuitton Cup'' challenger selection series, and the ''America's Cup Finals Match'' sailing regattas that may be conducted in the waters of San Francisco Bay adjacent to the City of San Francisco waterfront in the vicinity of the Golden Gate Bridge and Alcatraz Island between August and September 2012 and between July and September 2013. These regulations would be necessary to provide for the safety of life on the navigable waters immediately prior to, during, and immediately after any regattas that may occur. The proposed regulation would temporarily restrict vessel traffic in a portion of the San Francisco Bay, prohibit vessels not participating in the America's Cup sailing events from entering the designated race area, and create a temporary safety zone around racing vessels.

DATES: Comments and related material must be received by the Coast Guard on or before April 30, 2012. Public meetings will be held between 6 p.m. and 8 p.m. on March 6, 7, and 8, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0551 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) 366–4325.

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 temporary rule, call Lieutenant Junior Grade DeCarol A. Davis at (415) 399–7436, or email *D11–PF–MarineEvents@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 participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0551), 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,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0551'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box type ''USCG–2011–0551'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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 Meetings

We will hold three public meetings on this proposed rule on March 6, 7, and 8, 2012. All meetings will be held from 6 p.m. to 8 p.m. in the following locations. The meetings may end earlier if all concerns are heard prior to 8 p.m.

March 6, 2012: Presidio Log Cabin, 1299 Storey Ave., San Francisco, CA 94129;

March 7, 2012: Inn Marin, 250 Entrada Dr., Novato, CA 94949;

March 8, 2012: Waterfront Hotel, 10 Washington St., Oakland, CA 94607.

For information on services and facilities, or if you have any questions, contact Lieutenant Junior Grade DeCarol A. Davis at (415) 399–7436, or e-mail *D11–PF–MarineEvents@uscg.mil.* A written summary of each meeting will be placed in the docket.

Basis and Purpose

Under 33 CFR 100.35, the Coast Guard District Commander has authority to promulgate certain special local regulations deemed necessary to ensure the safety of life on the navigable waters immediately before, during, and immediately after an approved regatta or marine parade. The Commander of Coast Guard District 11 has delegated to the Captain of the Port (COTP) San Francisco the responsibility of issuing such regulations. The COTP also has the authority to establish safety zones under 33 CFR 1.05–1(e) and 165.5.

As discussed below, the America's Cup Race Management has applied for a Marine Event Permit to hold the 34th America's Cup races on the waters of San Francisco Bay in California. The Coast Guard has not approved the Marine Event Permit and is still evaluating the application. If the permit is approved, however, we anticipate that a special local regulation may be necessary to ensure public safety during the races. To provide adequate time for public input, we are proposing this special local regulation and safety zone prior to a decision on the Marine Event Permit. If the Marine Event Permit is not approved, we will withdraw this proposed rule.

Background

On December 31, 2010, the America's Cup Organizing Committee selected the City of San Francisco as the event sponsor to host the 34th America's Cup sailing events taking place in 2012 and 2013. Mayor Gavin Newsom and the San Francisco Board of Supervisors approved a 34th America's Cup Host and Venue Agreement with the America's Cup Event Authority and America's Cup Organizing Committee.

In 2012, the City of San Francisco plans to host two America's Cup World Series regattas as part of a circuit of sailing events being conducted at other U.S. and international venues. The San Francisco World Series regattas are scheduled to occur August 11–19, 2012, and August 25–September 2, 2012. Each World Series regatta consists of fleet and match races and determines a regatta winner, but the outcomes do not affect the Louis Vuitton Cup or the America's Cup Finals Match in 2013.

In August 2013, the City of San Francisco plans to host the Louis Vuitton Cup challenger selection series to determine the contestant to race the Defender of the 34th America's Cup. During the challenger selection series, teams will compete in a series of fleet and match races to determine the Louis Vuitton Cup winner, and that winning team will compete against the America's Cup Defender in the 34th America's Cup Finals Match, a best of nine match races, currently planned for September 7–24, 2013, and expected to draw the most spectator activity.

The 2012 World Series regattas feature 45-foot winged-sail catamarans (AC45) which have attained speeds in excess of 30 knots. In 2013, the Louis Vuitton Cup and America's Cup Finals match will feature larger 72-foot catamarans (AC72), each crewed by a team of 11 competitors. The AC72 is predicted to attain speeds in excess of 40 knots. The America's Cup Event Authority has selected venues for each regatta around the world to showcase

racing close to spectators ashore and via broadcast media. In San Francisco, they propose to take advantage of the natural amphitheater that the Central Bay and City waterfront provides.

Prior to drafting this Notice of Proposed Rulemaking, the Coast Guard solicited input from maritime users and stakeholders to better understand the nature of commercial and recreational activities on the Bay and how the proposed America's Cup sailing regattas could impact such activities. The Coast Guard used the local Harbor Safety Committee (HSC) and hosted various public meetings to obtain information and gather feedback on notional solutions.

The Coast Guard attends all San Francisco HSC meetings, providing a monthly status report on safety conditions in the Bay and addressing questions for maritime users at large. Since July 2011, the Coast Guard has reserved a place on the HSC agenda to discuss America's Cup planning and has fielded questions and concerns regarding the proposed marine event. Issues brought forward by the HSC include the following: (1) Concern regarding communication to the public (i.e., how the public will be notified when race-related regulations are in effect); (2) concern about the Coast Guard's ability and capacity to enforce event regulations over the time period proposed; (3) concern about the economic impact to commercial entities on the Bay; and (4) concern about San Francisco Bay weather patterns that could quickly change and affect safety.

In addition to gathering comments and concerns from the HSC, the Coast Guard held public meetings to gather information related to activities on the Bay that might be affected by the America's Cup events or related safety regulations. In these public meetings, the Coast Guard met with the following maritime users: The deep-draft commercial vessel operators and facility operators; tug and barge operators; ferry vessel operators; charter fishing vessel operators; small passenger vessel operators; and recreational vessel operators and other maritime stakeholders.

During the public meetings, the Coast Guard emphasized the following key objectives in implementing a special local regulation and permitting the event: (1) Maintaining a safe and accessible waterway; (2) maintaining smooth flow of maritime commerce; (3) mitigating environmental impacts; and (4) continuing USCG operations.

Typical comments received during public meetings included: (1) Enforcing navigational Rules of the Road; (2) allowing for necessary commercial access in and out of any regulated area; (3) ensuring the safety of spectators; (4) encouraging Coast Guard communication with the public; (5) minimizing the impact to commercial shipping traffic due to potential closure of the Eastbound and Westbound Traffic Lanes; and (6) addressing crowding and congestion due to on-water spectator activity. A record of these meetings is available in the docket, and the Coast Guard considered the public input received at these meetings when developing this proposed rule. The Coast Guard plans to continue consulting maritime users as part of a broad effort to determine and mitigate impacts throughout the America's Cup operational planning process.

Discussion of Proposed Rule

The Coast Guard proposes to create two temporary sections in the Code of Federal Regulations, one for the 2012 events and one for the 2013 events.

2012 America's Cup World Series

The Coast Guard proposes to establish a special local regulation associated with the America's Cup World Series regattas in 2012. The areas regulated by this special local regulation would be east of the Golden Gate Bridge, south of Alcatraz Island, west of Treasure Island, and in the vicinity of the City of San Francisco waterfront. The Coast Guard does not propose to regulate movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront. The Coast Guard proposes to establish a primary regulated area, which includes an area reserved for recreational swimmers, rowers, and kayakers; and a contingent regulated area used only during exceptional circumstances subject to COTP determination. Images of the primary and contingent regulated areas are available in the docket. In this special local regulation, the Coast Guard also intends to regulate vessel traffic in the Central Bay to maintain commercial access to the ports.

All proposed restrictions would apply between noon and 5 p.m. on designated race days, but normal operations could resume earlier than 5 p.m. at the discretion of the COTP. Designated race days would occur between August 11 and September 2, 2012. Not every day during that period would be a race day. The Coast Guard anticipates issuing notice of 12 race dates via Broadcast Notice to Mariners and publishing these race dates in the Local Notice to Mariners and the **Federal Register**.

The Coast Guard proposes to define a primary regulated area that surrounds the primary race area. The Coast Guard intends to define a regulated area larger than the proposed race area to accommodate changing weather conditions that may alter the exact orientation of racecourses shortly before each racing day and to help the public understand the maximum size of the regulated area of water during race periods. On most race days, the Coast Guard anticipates that some portion of the regulated area will not be restricted. America's Cup support vessels bearing prominently displayed banners will mark the race area on each race day to indicate areas restricted from non-participating vessels.

During prevailing westerly wind conditions, the regulated area for 2012 would be an area of approximately 2 square miles bounded by a line beginning at position 37°48′39″ N, 122°25′27″ W at the Municipal Pier at Aquatic Park, running north to position 37°49′14″ N, 122°25′27″ W located south of Alcatraz Island, running west to position 37°49′14″ N, 122°28′07″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W (NAD 83), running eastward along the City of San Francisco shoreline and ending at the Municipal Pier. As discussed in the above paragraph, the Coast Guard anticipates that the actual race area would be smaller than the primary regulated area bounded by these coordinates. The size of the regulated area is intended to accommodate the size and speed of the America's Cup racing vessels, while still allowing the flow of maritime commerce through the central Bay.

The Coast Guard also proposes a contingent race area to be used in the unlikely event that north-south wind conditions make the primary race area unusable for racing. This area will be located east of Alcatraz Island and northwest of Treasure Island within a contingent regulated area bounded by a line connecting the following coordinates: 37°50′56″ N, 122°24′37″ W; 37°51′24″ N, 122°23′39″ 37°51′23″ N, 122°22′58″ W; 37°50′07″ N, 122°22′05″ W; 37°49′54″ N, 122°22′43″ W; 37°49′35″ N, 122°22′46″ W; 37°48′51″ N, 122°22′20″ W; 37°48′52″ N, 122°23′56″ W; 37°49′02″ N, 122°24′43″ W; 37°49′48″ N, 122°24′47″ W; and 37°50′55″ N, 122°24′37″ W (NAD 83).

The Coast Guard understands that the proposed contingent regulated area extends into navigation channels east of Alcatraz Island and northwest of Treasure Island. In the unlikely event racing is planned in the contingent regulated area, it will only be conducted with COTP approval. If the COTP deems

that racing would interfere with the commercial shipping traffic requiring transit through the contingent regulated area, then the race will be delayed, shortened, or terminated to accommodate commercial shipping schedules.

The proposed rule would prohibit unauthorized vessels from entering the race area in use between noon and 5 p.m. on designated race days. This prohibition is necessary for public and participant safety because of the speed of the racing vessels. The Coast Guard understands, however, that other vessels may need to transit through these areas in order to continue operations. For example, we are aware that dredges may need to access the Alcatraz disposal site and that commercial ferries and fishing vessels will need to access the City of San Francisco waterfront; therefore, this proposed rule provides for entry into the race area after requesting and receiving Coast Guard permission.

The proposed rule intends to create a designated area for recreational swimmers, rowers, and kayakers located near the shoreline between Fort Point and Anita Rock. The expected number of vessels in the Bay and potential for crowding is such that the Coast Guard intends to create a designated space for these activities. During designated race periods, this area would be closed to motorized vessels and all other vessels greater than 20 feet. All vessels are prohibited from anchoring in this designated area. Restricting motorized and larger vessels from this area would help reduce environmental impact to the Crissy field shoreline, ensure access and safety for swimmers, rowers, and kayakers, and reduce potential viewing obstruction for spectators ashore.

This proposed rule would also prohibit anchoring and loitering along the San Francisco waterfront area east of the protected swimming and boating area, and extending to the Municipal Pier at Aquatic Park. Because the proposed race area for 2012 will be close to the waterfront, this restriction is necessary to protect public safety and prevent potential spectator vessel congestion south of the race area.

Because of the location of the America's Cup race areas and anticipated spectator activity on race days, this proposed rule would close the Eastbound and Westbound San Francisco Bay Traffic Lanes to vessels greater than or equal to 100 gross tons during designated race periods. Vessels less than 100 gross tons are not barred from the traffic lanes, so long as they stay out of the race area. The Coast Guard understands that commercial vessels greater than or equal to 100 gross tons may need to transit through the closed traffic lanes to conduct operations that would not interfere with the America's Cup sailing events; therefore, this proposed rule provides for entry into the closed traffic lanes with COTP permission.

Shipping traffic may continue to operate using the existing Deep Water (two-way) Traffic Lane. The Regulated Navigation Area (RNA) specified in 33 CFR 165.1181 would continue to apply in this area. This RNA contains one-way provisions for certain vessels such as those greater than 1,600 gross tons carrying dangerous cargos. At the COTP's discretion, vessels in addition to those listed in the RNA could be restricted to one-way traffic as coordinated by Sector San Francisco's Vessel Traffic Service (VTS). Such a one-way traffic scheme could allow more maneuvering space for transiting vessels and may reduce navigational obstacles.

The Coast Guard retains the discretion to delay, shorten, or terminate any America's Cup race, if necessary to ensure safety. Failure to comply with the lawful directions of the Coast Guard could result in additional vessel movement restrictions, citation, or both.

2013 America's Cup Sailing Events

For reasons similar to those described above, the Coast Guard proposes to establish a special local regulation associated with the Louis Vuitton Cup challenger selection series and the America's Cup Finals Match occurring in 2013. Similar to the special local regulation for the 2012 America's Cup World Series, the primary regulated area would be east of the Golden Gate Bridge, south of Alcatraz Island, west of Treasure Island, and in the vicinity of the City of San Francisco waterfront. Images of the regulated areas for 2013 are available in the docket.

As with the 2012 proposed rule, all proposed restrictions would apply between noon and 5 p.m. on designated race days, which would occur between July 4 and September 24, 2013. Not every calendar day during that period would be a race day. The Coast Guard anticipates issuing notice of 45 race dates via Broadcast Notice to Mariners and publishing these race dates in the Local Notice to Mariners and the **Federal Register**. As competition continues, the number of races planned each day in 2013 will decrease as competitors are eliminated during the Louis Vuitton Cup challenger series. America's Cup Race Management proposes conducting only one match per race day from August 23, 2013 through the America's Cup Finals conclusion on September 24, 2013.

The primary regulated area proposed for 2013 is larger than 2012's because of the larger size of the AC72 racing vessels. The 2013 proposed rule would implement the same provisions as described for the 2012 special local regulation for establishing a primary regulated area, which will include an area reserved for recreational swimmers, rowers, kayakers; and a contingent regulated area. As in 2012, the Coast Guard also intends to regulate vessel traffic in the Central Bay to maintain commercial access to the ports. In addition to those provisions discussed in the 2012 special local regulation, the Coast Guard proposes to establish a transit zone along the San Francisco waterfront and restrict the use of Anchorage 7.

During prevailing westerly wind conditions, the 2013 race area would be located inside of a primary regulated area approximately 4.5 square miles large bounded by a line beginning at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23, running northeast to position 37°48′41″ N, 122°23′16″ W, running northwest to position 37°49′41″ N, 122°24′30″ W located east of Alcatraz Island, running west to position 37°49′41″ N, 122°27′35″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, and running eastward along the City of San Francisco shoreline ending at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23.

As in 2012, the Coast Guard anticipates that the actual 2013 race area would be smaller than the regulated bounded by the coordinates above. America's Cup support vessels bearing prominently displayed banners will mark the race area on each race day to indicate areas restricted from non-participating vessels.

While evaluating the primary regulated area proposed for 2012 and its possible impact to commercial operators, the Coast Guard considered including a dedicated transit zone for 2012 similar to the one proposed for 2013. The Coast Guard believes that a transit zone for 2012 would be unnecessary because the regulated area's size and location, which are similar to that of the regulated area for San Francisco Fleet Week, adequately allow vessel operators to transit around the regulated area. Conversely, the regulated area for 2013 is more than twice as large as the regulated area for 2012, and the Coast Guard anticipates that the Louis Vuitton Cup and the

America's Cup Finals in 2013 will draw more spectator activity than the regattas in 2012. Due to the size of the regulated area in 2013, it may be less feasible for commercial operators to safely transit around this regulated area as expected in 2012. For this reason, this rule proposes to establish a transit zone along the City of San Francisco waterfront and a no-loitering area similar to the one proposed for 2012.

The transit zone is intended to facilitate the safe transit of vessels needing access to pier space and facilities along the City of San Francisco waterfront and to minimize other traffic that may obstruct the waterfront. Vessels would not be permitted to loiter or block the transit area. At the COTP's discretion, vessel movement in this zone could be restricted to one-way traffic coordinated by the Patrol Commander. The eastern entrances of the transit zone may be temporarily closed as races finish.

This proposed rule would also restrict vessels from anchoring in Anchorage No. 7 without permission from the COTP during designated race periods in 2013. Keeping this area clear would increase maneuvering room for transiting vessels during peak spectator activity and provide an emergency anchorage in response to a marine casualty.

The Coast Guard retains the discretion to delay, shorten, or terminate any America's Cup race, if necessary. Failure to comply with the lawful directions of the Coast Guard could result in additional vessel movement restrictions, citation, or both.

Temporary Safety Zone for America's Cup Racing Vessels

The Coast Guard proposes to establish a temporary safety zone requiring persons and vessels to remain 100 yards from America's Cup racing vessels. This temporary safety zone would be in place between noon and 5 p.m. on race days and would not be in effect while the racing vessels are practicing outside of designated race periods. Only on rare occasions do we anticipate America's Cup racing vessels competing outside of the race area, and we anticipate that this safety zone will be necessary for public safety during such exceptional circumstances. An example of an exceptional circumstance would be using the safety zone to provide additional safeguards during Opening Day Ceremonies when America's Cup Race Management proposes to conduct a race leg under the Golden Gate Bridge.

We also have proposed this temporary safety zone in part to reduce the size of the footprint of the primary regulated areas. The provisions of this temporary safety zone would not apply to anchored vessels, nor would it exempt racing vessels from any Federal, state or local laws or regulations, including Rules of the Road regulations.

Regulatory Analyses

We developed this proposed 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

Executive Orders 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The entities most likely to be affected by this proposed rule would be commercial shipping traffic, ferry vessels, fishing vessels, and pleasure craft engaged in recreational activities. Although this rule proposes to restrict navigation on San Francisco Bay, these restrictions would only be in place in a small area for a limited time on specific dates. We also expect this event to be well publicized so that waterway users would be able to plan their activities in advance to take into account any restrictions.

The proposed rule would not exceed a five-hour period between noon and 5 p.m. on certain dates. On many race days, the affected period will be shorter. The entities affected would be permitted to navigate around the restricted area during these periods, and the proposed rule would create a traffic scheme for doing so. The proposed rule would not prevent commercial operators from conducting operations during the America's Cup sailing events. Shipping traffic may operate around the regulated area using the Deep Water (two-way) Traffic Lane. The San Francisco VTS will help facilitate the safe and efficient use of the waterways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. We find that the proposed rule would have some effect on small entities, but would not have a significant economic impact on a substantial number of the entities. This proposed rule would affect the following entities, some of which might be small entities: (i) the owners or operators of commercial vessels intending to transit, operate, or anchor in a portion of the San Francisco Bay; and (ii) owners and operators of recreational vessels using the regulated portion of San Francisco Bay.

Although this proposed rule would affect these small entities, this rule would not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will restrict only a small portion of the waterway for a limited period of time; (ii) vessel traffic could pass safely around the area; (iii) vessel traffic may pass through the area with COTP approval; (iv) recreational vessel operators may use spaces outside of the affected areas; (v) the maritime public would be advised in advance of this regulated area via Broadcast Notice to Mariners; and (vi) at times of high traffic density anticipated in 2013, there will be a transit zone implemented to facilitate navigation. These measures have been implemented during similar marine events such as Fleet Week and have been successful.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade DeCarol A. Davis at (415) 399–7436, or email *D11–PF–MarineEvents@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and the Department of Homeland Security Management Directive 023–01 and Coast Guard Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the NEPA, the Coast Guard is working cooperatively with other affected Federal Agencies to evaluate potential environmental effects associated with the special local regulation, marine event permit, and safety zones for the proposed 34th America's Cup. The Coast Guard will not publish a final rule until the NEPA review has been completed.

We are publishing this proposed rule now to encourage maximum public input on the safety provisions proposed and seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

The NEPA analysis will be available during the NPRM public review period and additional information on the NEPA analysis, along with the dates of the NEPA public review period, can be found at *www.americascupnepa.org.* Comments specific to the NEPA analysis or the marine event permit should be directed to the contact listed at *www.americascupnepa.org.*

List of Subjects

33 CFR Part 100

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

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 and 165 as follows:

PART 100—REGATTAS AND MARINE PARADES

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

Authority: 33 U.S.C. 1233.

2. Add temporary § 100–T11–0551A to read as follows:

§ 100–T11–0551A Special Local Regulation; 2012 America's Cup World Series.

(a) *Location.* This special local regulation establishes regulated areas on the waters of San Francisco Bay located in the vicinity of the Golden Gate

Bridge, Alcatraz Island, the City of San Francisco waterfront, and the Bay Bridge. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule.

(1) The following area is the Primary Regulated Area for the 2012 America's Cup sailing regattas: All waters of San Francisco Bay bounded by a line beginning at position 37°48′39″ N, 122°25′27″ W at the Municipal Pier at Aquatic Park, running north to position 37°49′14″ N, 122°25′27″ W located south of Alcatraz Island, running west to position 37°49′14″ N, 122°28′07″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, running eastward along the City of San Francisco shoreline, and ending at the Municipal Pier. All coordinates are North American Datum 1983.

(2) The following area is the Contingent Regulated Area for the 2012 America's Cup sailing regattas: All waters of San Francisco Bay bounded by a line connecting the following coordinates: 37°50′56″ N, 122°24′37″ W; 37°51′24″ N, 122°23′39″ W; 37°51′23″ N, 122°22′58″ W; 37°50′07″ N, 122°22′05″ W; 37°49′54″ N, 122°22′43″ W; 37°49′35″ N, 122°22′46″ W; 37°48′51″ N, 122°22′20″ W; 37°48′52″ N, 122°23′56″ W; 37°49′02″ N, 122°24′43″ W; 37°49′48″ N, 122°24′47″ W; and 37°50′55″ N, 122°24′37″ W. All coordinates are North American Datum 1983.

(b) *Enforcement Period.* The regulations in this section will be enforced between the hours of noon and 5 p.m. (unless curtailed earlier by the COTP or PATCOM) on race days between August 11, 2012, and September 2, 2012. Notice of the specific race dates will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**.

(c) *Definitions.* (1) *Patrol Commander (PATCOM).* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the special local regulation.

(2) *2012 Race Area.* As used in this section, ''2012 Race Area'' means an area within the Primary Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(3) *Contingent Race Area.* As used in this section, ''Contingent Race Area'' means an area within the Contingent Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(d) *Special Local Regulations.* (1) *2012 Race Area Restrictions.* The 2012 Race Area is closed to all unauthorized vessel traffic, except for those permitted by the COTP or PATCOM.

(2) *Contingent Race Area Restrictions.* In the event the race area must be altered to accommodate a north-south wind direction or other shift in weather, the restrictions in paragraphs (d)(1) will apply to the Contingent Race Area. In deciding whether to conduct the race in the Contingent Race Area, the COTP will consider commercial shipping traffic that intends to operate in the Central Bay Precautionary Area west of Treasure Island. The COTP will issue Broadcast Notices to Mariners to publicize the use of the Contingent Race Area.

(3) *Requesting Transit through Race Areas.* Vessel operators who desire to enter or operate within the 2012 Race Area or the Contingent Race Area while those areas are restricted must contact the COTP or PATCOM to obtain permission to do so. Vessel operators given permission to enter or operate in those race areas must comply with all directions given to them by the COTP or PATCOM. Persons and vessels may request permission to enter a race area on VHF Channel 23A or through the Coast Guard Sector San Francisco Command Center via telephone at (415) 399–3547.

(4) *Area Closed to All Motorized Vessels and Vessels Greater Than 20 Feet.* Within the Primary Regulated Area, the following area is established for swimmers, rowers, kayakers, and non-motorized vessels of 20 feet or less: The area bounded by a line beginning at position, 37°48′32″ N, 122°26′24″ W, running west to position 37°48′32″ N, 122°28′00″ W, running northwest to position 37°48′40″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, running eastward along the City of San Francisco shoreline, and ending at the beginning position 37°48′32″ N, 122°26′24″ W (NAD 83). This area is closed to all motorized vessels and all other vessels greater than 20 feet. All vessels are prohibited from anchoring in this designated area.

(5) *No-Loitering Area.* No vessels may anchor or loiter in the navigable waters south of the 2012 Race Area, east of the area defined in paragraph (d)(4), and west of Aquatic Park, except with the permission of PATCOM.

(6) *Closure of Shipping Lanes.* Eastbound and Westbound San Francisco Bay Traffic Lanes will be closed to all vessels greater than or equal to 100 gross tons. Vessel traffic will be permitted to operate during the enforcement period using the Deep Water (two-way) Traffic Lane established in 33 CFR 165.1181. Vessels of 100 gross tons or greater that need to enter or operate within the closed traffic lanes shall obtain permission from the COTP by contacting the VTS via VHF Channel 14.

(7) *Control of Vessel Movement to Ensure Safety.*

(i) The COTP, or PATCOM as the designated representative of the COTP, may control the movement of all vessels operating on the navigable waters of San Francisco Bay when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazardous circumstances.

(ii) When hailed or signaled by PATCOM, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(iii) The COTP may delay, shorten, or terminate any America's Cup race at any time it is deemed necessary.

(iv) After termination of the America's Cup races each day, the Coast Guard will issue a Broadcast Notice to Mariners to publicize the decision to resume normal operations.

3. Add temporary § 100–T11–0551B to read as follows:

§ 100–T11–0551B Special Local Regulation; 2013 America's Cup Sailing Events.

(a) *Location.* This special local regulation establishes regulated areas on the waters of San Francisco Bay located in the vicinity of the Golden Gate Bridge, Alcatraz Island, the City of San Francisco waterfront, and the Bay Bridge. Movement within marinas, pier spaces, and facilities along the City of San Francisco waterfront is not regulated by this rule.

(1) The following area is the Primary Regulated Area for the 2013 America's Cup sailing events: All waters of San Francisco Bay bounded by a line beginning at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23, running northeast to position 37°48′41″ N, 122°23′16″ W, running northwest to position 37°49′41″ N, 122°24′30″ W located east of Alcatraz Island, running west to position

37°49′41″ N, 122°27′35″ W, running southwest to position 37°49′02″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, and running eastward along the City of San Francisco shoreline ending at position 37°48′12″ N, 122°24′04″ W located on the foot of Pier 23. All coordinates are North American Datum 1983.

(2) The following area is the Contingent Regulated Area for the 2013 America's Cup sailing events: All waters of San Francisco Bay bounded by a line connecting the following coordinates: 37°50′56″ N, 122°24′37″ W; 37°51′24″ N, 122°23′39″ W; 37°51′23″ N, 122°22′58″ W; 37°50′07″ N, 122°22′05″ W; 37°49′54″ N, 122°22′43″ W; 37°49′35″ N, 122°22′46″ W; 37°48′51″ N, 122°22′20″ W; 37°48′52″ N, 122°23′56″ W; 37°49′02″ N, 122°24′43″ W; 37°49′48″ N, 122°24′47″ W; and 37°50′55″ N, 122°24′37″ W (NAD 83).

(b) *Enforcement Period.* The following regulations will be enforced between the hours of noon and 5 p.m. (unless curtailed earlier by the COTP or PATCOM) on race days between July 4, 2013, and September 24, 2013. Notice of the specific race dates will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the Local Notice to Mariners and in the **Federal Register**.

(c) *Definitions.* (1) *Patrol Commander (PATCOM).* As used in this section, ''Patrol Commander'' or ''PATCOM'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the special local regulation.

(2) *2013 Race Area.* As used in this section, ''2013 Race Area'' means an area within the Primary Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(3) *Contingent Race Area.* As used in this section, ''Contingent Race Area'' means an area within the Contingent Regulated Area bounded by America's Cup support vessels, which will be marked by prominently displayed banners.

(d) *Special Local Regulations.* (1) *2013 Race Area Restrictions.* The 2013 Race Area is closed to all unauthorized vessel traffic, except for those permitted by the COTP or PATCOM.

(2) *Contingent Race Area Restrictions.* In the event the race area must be altered to accommodate a north-south wind direction or other shift in weather, the restrictions in paragraphs (d)(1) will apply to the Contingent Race Area. In deciding whether to conduct the race in the Contingent Race Area, the COTP will consider commercial shipping traffic that intends to operate in the Central Bay west of Treasure Island. The COTP will issue Broadcast Notices to Mariners to publicize the use of the Contingent Race Area.

(3) *Requesting Transit through Race Areas.* Vessel operators who desire to enter or operate within the 2013 Race Area or the Contingent Race Area while those areas are restricted must contact the COTP or PATCOM to obtain permission to do so. Vessel operators given permission to enter or operate in those race areas must comply with all directions given to them by the COTP or PATCOM. Persons and vessels may request permission to enter a race area on VHF Channel 23A or through the Coast Guard Sector San Francisco Command Center via telephone at (415) 399–3547.

(4) *Area Closed to All Motorized Vessels and Vessels Greater Than 20 Feet.* Within the Primary Regulated Area, the following area is established for swimmers, rowers, kayakers, and non-motorized vessels of 20 feet or less: The area bounded by a line beginning at position, 37°48′32″ N, 122°26′24″ W, running west to position 37°48′32″ N, 122°28′00″ W, running northwest to position 37°48′40″ N, 122°28′21″ W, running south to position 37°48′32″ N, 122°28′21″ W, running eastward along the City of San Francisco shoreline, and ending at the beginning position 37°48′32″ N, 122°26′24″ W (NAD 83). This area is closed to all motorized vessels and all other vessels greater than 20 feet. All vessels are prohibited from anchoring in this designated area.

(5) *No-Loitering Area.* No vessels may anchor or loiter in the navigable waters south of the 2013 Race Area, east of the area defined in paragraph (d)(4), and west of Aquatic Park, except with the permission of PATCOM.

(6) *Transit Zone.* Within the Primary Regulated Area, a transit zone, approximately 200 yards in width, is established along the City of San Francisco waterfront. The transit zone will begin at the face of Pier 23, run westward along the pier faces to the Municipal Pier, and continue westward to the northern boundary of the area defined in paragraph (d)(4). This transit zone is bounded by the following coordinates: 37°48′40″ N, 122°28′21″ W; 37°48′32″ N, 122°28′00″ W; 37°48′32″ N, 122°26′24″ W; 37°48′39″ N, 122°25′27″ W; 37°48′23″ N, 122°25′13″ W; 37°48′41″ N, 121°24′30″ W; 37°48′28″ N, 121°24′04″ W; 37°48′17″ N, 121°23′54″ W; 37°48′21″ N, 122°23′49″ W; 37°48′33″ N, 122°24′00″ W; 37°48′48″ N, 122°24′32″ W; 37°49′15″ N, 122°24′00″ W; 37°49′21″ N, 122°24′05″ W; 37°48′48″ N, 122°24′40″ W; 37°48′49″ N, 122°25′16″ W; 37°48′37″ N, 122°26′22″ W; 37°48′37″ N, 122°28′00″ W; 37°48′47″ N, 122°28′21″ W; (NAD 83). This transit zone is for vessels that need to access pier space or facilities at, or to transit along, the City of San Francisco waterfront. It may be marked by temporary buoys or America's Cup support vessels. No vessel may anchor, block, loiter in, or otherwise impede transit in the transit zone. In the event the eastern sections of the transit zone are temporarily closed for vessel safety as races finish, vessels must follow the procedures in paragraph (d)(3) to request access.

(7) *Anchorage 7 Restrictions.* No vessel may anchor in Anchorage No. 7, delineated at 33 CFR 110.224(e)(4), except with the permission of the COTP. Vessels encountering emergencies that require anchoring in Anchorage 7 should contact the Sector San Francisco Vessel Traffic System (VTS) on VHF Channel 14.

(8) *Closure of Shipping Lanes.* Eastbound and Westbound San Francisco Bay Traffic Lanes will be closed to all vessels greater than or equal to 100 gross tons. Vessel traffic will be permitted to operate during the America's Cup sailing races using the Deep Water (two-way) Traffic Lane established in 33 CFR 165.1181. Vessels of 100 gross tons or greater that need to enter or operate within the closed traffic lanes shall obtain permission from the COTP by contacting the VTS via VHF Channel 14.

(9) *Control of Vessel Movement to Ensure Safety.* (i) The COTP, or PATCOM as the designated representative of the COTP, may control the movement of all vessels operating on the navigable waters of San Francisco Bay when the COTP has determined that such orders are justified in the interest of safety by reason of weather, visibility, sea conditions, temporary port congestion, and other temporary hazardous circumstances.

(ii) When hailed or signaled by PATCOM, the hailed vessel must come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in additional operating restrictions, citation for failure to comply, or both.

(iii) The COTP may delay, shorten, or terminate any America's Cup race at any time it is deemed necessary to ensure safety.

(iv) After termination of the America's Cup races each day, the Coast Guard will issue a Broadcast Notice to

Mariners to publicize the decision to resume normal operations.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

4. The authority for part 165 continues to read as follows:

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

5. Add a new temporary section § 165–T11–0551 to read as follows:

§ 165–T11–0551 Safety Zone; America's Cup Sailing Events.

(a) *Definitions.* (1) *America's Cup Racing Vessel.* As used in this section, ''America's Cup Racing Vessel'' means an official competing vessel of the 34th America's Cup.

(2) *Patrol Commander.* As used in this section, ''Patrol Commander'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer, or a Federal, State, or local officer designated by the Captain of the Port San Francisco (COTP) to assist in the enforcement of the safety zone.

(b) *Location and enforcement period.* A safety zone extends 100 yards around America's Cup Racing Vessels between noon and 5 p.m. on the race days during the following dates: between August 11, 2012, and September 2, 2012; and between July 4, 2013, and September 24, 2013. Notice of the specific race dates will be issued via Broadcast Notice to Mariners and published by the Coast Guard in the **Federal Register**.

(c) *Regulations.* (1) The provisions of 33 CFR 165.23 apply to this safety zone. No person or vessel underway may enter or remain within 100 yards of an America's Cup Racing Vessel unless authorized by the Patrol Commander.

(2) This safety zone shall not relieve any vessel, including America's Cup Racing Vessels, from the observance of the Navigation Rules.

(3) To request authorization to operate within 100 yards of an America's Cup Racing Vessel, contact the Patrol Commander on VHF–FM Channel 23A.

(4) When conditions permit, the Patrol Commander should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of America's Cup Racing Vessels in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of a passing America's Cup Racing Vessel.

Dated: January 23, 2012.

Cynthia L. Stowe,

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

[FR Doc. 2012–1907 Filed 1–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Chapter I

[Docket No.: PTO–P–2012–0002]

Patent Public Advisory Committee Public Hearings on the Proposed Patent Fee Schedule

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of Public Hearings.

SUMMARY: Under Section 10 of the America Invents Act (AIA), the United States Patent and Trademark Office (USPTO) may set or adjust by rule any patent or trademark fee established, authorized, or charged under Title 35 of the United States Code or the Trademark Act of 1946, respectively. The USPTO currently is planning to set or adjust patent fees pursuant to its Section 10 fee setting authority. As part of the rulemaking process to set or adjust patent fees, the Patent Public Advisory Committee (PPAC) is required under Section 10 of the AIA to hold a public hearing about any proposed patent fees, and the USPTO is required to assist PPAC in carrying out that hearing. To that end, the USPTO will make its proposed patent fees available as set forth in the Supplementary Information section of this Notice before any PPAC hearing and will help the PPAC to notify the public about the hearing. Accordingly, this document announces the dates and logistics for two PPAC public hearings regarding USPTO proposed patent fees. Interested members of the public are invited to testify at the hearing and/or submit written comments about the proposed patent fees and the questions posed on PPAC's Web site about the proposed fees.

DATES: *Public hearings:* February 15 and 23, 2012.

Comments: For those wishing to submit written comments, but not requesting an opportunity to testify at either public hearing, the deadline for receipt of those written comments is February 29, 2012.

Oral testimony: Those wishing to present oral testimony at either hearing must request an opportunity to do so in writing no later than February 8, 2012.

Pre-scheduled speakers: Pre-scheduled 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 February 29, 2012.

ADDRESSES: *Public hearings:* The PPAC will hold public hearings on Wednesday, February 15, 2012, beginning at 8 a.m., Eastern Standard Time (EST), and ending at 3 p.m., EST, at the USPTO, Madison Auditorium, Concourse Level, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314, and on Thursday, February 23, 2012, beginning at 8 a.m., Pacific Standard Time (PST), and ending at 3 p.m., PST, at the Sunnyvale Public Library, 665 W. Olive Avenue, Sunnyvale, California 94086.

Email: Written comments should be sent by email addressed to *fee.setting@uspto.gov.*

Postal mail: Comments may also be submitted by postal mail addressed to: United States Patent and Trademark Office, Mail Stop CFO, P.O. Box 1450, Alexandria, VA 22313–1450, ATTN: Michelle Picard. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email. Written comments should be identified in the subject line of the email or postal mailing as ''Fee Setting.'' Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments.

Web cast: 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: *www.uspto.gov/americainventsact*) before the public hearing.

Transcripts: Transcripts of the hearings will be available on the USPTO Internet Web site (*www.uspto.gov/americainventsact*) shortly after the hearings.

FOR FURTHER INFORMATION CONTACT: Michelle Picard, Office of the Chief Financial Officer, by phone (571) 272–6354, or by email at *michelle.picard@uspto.gov*; or Janet Gongola, Office of the Under Secretary and Director, by phone at (571) 272–8734, or by email at *janet.gongola@uspto.gov.*

SUPPLEMENTARY INFORMATION: 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; and (4) an indication of the amount of time needed for the testimony. Requests to testify must be submitted by email to Jennifer Lo at *Jennifer.Lo@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*). If time permits, the PPAC may permit unscheduled testimony as well.

Effective September 16, 2011, with the passage of the AIA, the USPTO is authorized under Section 10 of the AIA to set or adjust by rule all patent and trademark fees established, authorized, or charged under Title 35 of the United States Code and the Trademark Act of 1946, respectively. Patent and trademark fees set or adjusted by rule under Section 10 of the AIA may only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents and trademarks, respectively, including administrative costs of the Office with respect to each as the case may be.

Congress set forth the process for the USPTO to follow in setting or adjusting patent and trademark fees by rule under Section 10 of the AIA. Congress requires the relevant advisory committee to hold a public hearing about the USPTO fee proposals after receiving them from the agency. Congress likewise requires the relevant advisory committee to prepare a written report on the proposed fees and the USPTO to consider the relevant advisory committee's report before finally setting or adjusting the fees. Further, Congress requires the USPTO to publish its proposed fees and supporting rationale in the **Federal Register** and give the public not less than 45 days in which to submit comments on the proposed change in fees. Finally, Congress requires the USPTO to publish its final rule setting or adjusting fees also in the **Federal Register**.

Presently, the USPTO is planning to exercise its fee setting authority to set or adjust patent fees. The USPTO will publish a proposed patent fee schedule and related supplementary information for public viewing no later than February 7, 2012, on the USPTO Internet Web site (address: *www.uspto.gov/americainventsact*). In turn, the PPAC will hold two public hearings about the proposed patent fee schedule on the dates indicated herein. The USPTO will assist the PPAC in holding those hearings by providing resources to organize the hearings and by notifying the public about the hearings, such as through this **Federal Register** Notice.

To gather information from the public about the USPTO's proposed patent fees, the PPAC will post specific questions for the public's consideration on the PPAC's Internet Web site (address: *http://www.uspto.gov/about/advisory/ppac*) after the USPTO publishes its proposed patent fee schedule. The public may wish to address those questions in its hearing testimony and/or in written comments submitted to PPAC as described herein.

Following the PPAC public hearing, the USPTO will publish a Notice of Proposed Rulemaking in the **Federal Register**, setting forth its proposed patent fees. The publication of that Notice will open a comment window through which the public may provide written comments directly to the USPTO. Additional information about public comment to the USPTO will be provided in the USPTO's Notice of Proposed Rulemaking.

Dated: January 24, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–1939 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2010–0255–201116; FRL–9624–2]

Air Quality Implementation Plans; Kentucky; Attainment Plan for the Kentucky Portion of the Huntington-Ashland 1997 Annual $PM_{2.5}$ Nonattainment Area

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), to EPA on December 3, 2008, for the purpose of providing for attainment of the 1997 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) in the Kentucky portion of the Huntington-Ashland, West Virginia-Kentucky-Ohio $PM_{2.5}$ nonattainment area (hereafter referred to as the ''Huntington-Ashland Area'' or ''Area''). The Huntington-Ashland Area is comprised of Boyd County and a portion of Lawrence County in Kentucky; Cabell and Wayne Counties and a portion of Mason County in West Virginia; and Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio. The Kentucky plan (hereafter referred to as the ''attainment plan'') pertains only to the Kentucky portion of the Huntington-Ashland Area. EPA is now proposing to approve Kentucky's submittal regarding reasonably available control technology (RACT) and reasonably available control measures (RACM); reasonable further progress (RFP); base-year and attainment-year emissions inventories; contingency measures; and, for transportation conformity purposes, an insignificance determination for $PM_{2.5}$ and nitrogen oxides (NO_X) for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. This action is being taken in accordance with the Clean Air Act (CAA or Act) and the ''Clean Air Fine Particle Implementation Rule,'' hereafter referred to as the ''$PM_{2.5}$ Implementation Rule,'' issued by EPA on April 25, 2007. The States of West Virginia and Ohio have provided separate SIP revisions with attainment plans for their portions for the Huntington-Ashland Area. EPA will act on those SIP revisions in rulemaking separate from today's rulemaking.

DATES: Written comments must be received on or before February 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R04–OAR–2010–0255 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–2010–0255, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2010–0255. 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: Joel Huey of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov*

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I. What action is EPA proposing to take?

EPA is proposing to approve Kentucky's SIP revision, submitted through the DAQ to EPA on December 3, 2008, for the purpose of demonstrating attainment of the 1997 Annual $PM_{2.5}$ NAAQS for the Kentucky portion of the Huntington-Ashland Area. Kentucky's $PM_{2.5}$ attainment plan includes an analysis of RACM/RACT, an RFP plan, base-year and attainment-year emissions inventories for the Area, contingency measures, and an insignificance determination for mobile $PM_{2.5}$ and NOx emissions for transportation conformity purposes.

EPA has determined that Kentucky's $PM_{2.5}$ attainment plan for the 1997 Annual $PM_{2.5}$ NAAQS for its portion of the Huntington-Ashland Area meets applicable requirements of the CAA and the $PM_{2.5}$ Implementation Rule. EPA is proposing to approve Kentucky's attainment plan for the Commonwealth's portion of the Huntington-Ashland Area, including the insignificance determination for $PM_{2.5}$ and NO_X for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. EPA's analysis for this proposed action is discussed in Section IV of this proposed rulemaking.

II. What is the background for EPA's proposed action?

A. Designation History

On July 18, 1997 (62 FR 36852), EPA established the 1997 $PM_{2.5}$ NAAQS as an annual standard of 15.0 micrograms per cubic meter (μg/m³), based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour (or daily) standard of 65 μg/m³, based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA established the NAAQS based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS in 1999 and established a complete set of air quality monitors by January 2001. On January 5, 2005, EPA promulgated initial air quality designations for the 1997 $PM_{2.5}$ NAAQS (70 FR 944), which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–2003.

On April 14, 2005, EPA promulgated a supplemental rule amending the Agency's initial designations (70 FR 19844) but retaining the original effective date of April 5, 2005. As a result of that supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of about 88 million. The Kentucky portion of the tri-state WV–KY–OH Huntington-Ashland Area, which is the subject of this proposed rulemaking, is included in the list of areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. As mentioned above, the Kentucky portion of the Huntington-Ashland Area consists of Boyd County in its entirety and a portion of Lawrence County, Kentucky.

On October 17, 2006, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m³ and retained the level of the Annual $PM_{2.5}$ NAAQS at 15.0 μg/m³.

See 71 FR 61144. On November 13, 2009, EPA designated areas as either attainment/unclassifiable, unclassifiable or nonattainment with respect to the revised 24-Hour $PM_{2.5}$ NAAQS. *See* 74 FR 58688. Of relevance to the proposed rulemaking herein, EPA's November 2009 designation action clarified the designations for the 1997 $PM_{2.5}$ NAAQS by relabeling the existing designation tables to specifically identify designations made for the 1997 Annual $PM_{2.5}$ NAAQS and those made for the 1997 24-hour $PM_{2.5}$ NAAQS (i.e., 65 μg/m^3).

B. Clean Air Fine Particle Implementation Rule

As noted above, on April 25, 2007, EPA issued the $PM_{2.5}$ Implementation Rule for the 1997 $PM_{2.5}$ NAAQS (72 FR 20586). This rule describes the CAA framework and requirements for developing SIPs to achieve attainment in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. Such attainment plans must include a demonstration that a nonattainment area will meet the applicable NAAQS within the timeframe provided in the statute. This demonstration must include modeling that is performed in accordance with 40 CFR 51.112 (Demonstration of adequacy) and Appendix W to part 51 (Guideline on Air Quality Models) and that is consistent with EPA modeling guidance. *See* 40 CFR 51.1007. The modeling demonstration should include supporting technical analyses and descriptions of all relevant adopted Federal, state, and local regulations and control measures that have been adopted in order to provide for attainment of the 1997 $PM_{2.5}$ NAAQS by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment demonstration must show that a nonattainment area will attain the standards as expeditiously as practicable, but within five years of designation (i.e., by an attainment date of no later than April 5, 2010, based on air quality data for 2007 through 2009). If the area is not expected to meet the NAAQS by April 5, 2010, a state may request to extend the attainment date by one to five years based upon the severity of the nonattainment problem or the feasibility of implementing control measures in the specific area. CAA section 172(a)(2). For EPA to approve an extension of the attainment date beyond 2010, the state must provide an analysis that is consistent with the statutory criteria for an extension and that demonstrates that the attainment date is as expeditious as practicable for the area, given the existing facts and circumstances.

For each nonattainment area, the state (or each state of a multi-state area) must demonstrate that it has adopted all RACM, including all RACT, as needed to provide for attainment of the $PM_{2.5}$ NAAQS in the area ''as expeditiously as practicable.'' The $PM_{2.5}$ Implementation Rule provides guidance for making these RACM/RACT determinations. *See* discussion in section IV.A.4. below. Any measures that are necessary to meet these requirements that are not already federally promulgated or in an EPA-approved part of the SIP must be submitted as part of a state's attainment plan. Any state measures in the control strategy must meet the applicable statutory and regulatory requirements, and, in particular, must be enforceable.

The $PM_{2.5}$ Implementation Rule also includes guidance on pollutants that states must address in their attainment plans. Section 302(g) of the CAA authorizes EPA to regulate criteria pollutants and their precursors. The main chemical precursors associated with fine particle formation are SO_2, NO_X, volatile organic compounds (VOCs), and ammonia. The effect of reducing emissions of precursor pollutants that contribute to $PM_{2.5}$ concentrations varies by area, however, depending upon local $PM_{2.5}$ composition, emission levels, and other area-specific factors. For this reason, the $PM_{2.5}$ Implementation Rule recommends that states control the direct $PM_{2.5}$ emissions and the precursor emissions that would be most effective for attaining the NAAQS within the specific area, based upon an appropriate technical demonstration.

The $PM_{2.5}$ Implementation Rule defines direct $PM_{2.5}$ emissions as ''solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon, directly emitted sulfate, directly emitted nitrate, and other inorganic particles (including but not limited to crustal material, metals, and sea salt).'' 40 CFR 51.1000.

The $PM_{2.5}$ Implementation Rule requires states to identify and evaluate sources of $PM_{2.5}$ direct emissions and $PM_{2.5}$ attainment plan precursors. 40 CFR 51.1002(c). The rule requires states to address SO_2 as a $PM_{2.5}$ attainment plan precursor and to evaluate SO_2 for possible control measures in all $PM_{2.5}$ nonattainment areas. States are also required to address and evaluate reasonable controls for NO_X as a $PM_{2.5}$ attainment plan precursor unless the state and EPA make a finding that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

Although current scientific information shows that certain VOC emissions are precursors to the formation of secondary organic aerosol, and significant progress has been made in understanding the role of gaseous organic material in the formation of organic PM, this relationship remains complex. Further research and technical tools are needed to better characterize emissions inventories for specific VOCs and to determine the extent of the contribution of specific VOCs to organic PM mass. Because of these factors, the $PM_{2.5}$ Implementation Rule does not require states to address or evaluate controls for VOCs as $PM_{2.5}$ attainment plan precursors unless the state or EPA makes a finding that VOC emissions from sources in the state significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

The $PM_{2.5}$ Implementation Rule describes the formation of particles related to ammonia emissions, which is a complex, nonlinear process. Though recent studies have improved our understanding of the role of ammonia in aerosol formation, further research is needed to better describe the relationship between ammonia emissions and particulate matter concentrations and the related impacts. Also, area-specific data is needed to evaluate the effectiveness of reducing ammonia emissions in reducing $PM_{2.5}$ concentrations in different areas and to determine where ammonia decreases may increase the acidity of particles and precipitation. For these reasons, the $PM_{2.5}$ Implementation Rule does not require states to address or evaluate controls for ammonia as $PM_{2.5}$ attainment plan precursors unless the state or EPA makes a finding that ammonia emissions from sources in the state significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

The presumptive inclusion of NO_X and the presumptive exclusion of VOCs and ammonia as attainment plan precursors can be reversed based on an acceptable technical demonstration for a particular nonattainment area by the state or EPA. The state must demonstrate that, based on the sum of available technical and scientific information, it would be appropriate for a nonattainment area to reverse the presumptive approach for a particular precursor. Such a demonstration should include information from multiple

sources, such as results of speciation data analyses, air-quality modeling studies, chemical-tracer studies, emissions inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area. *See* $PM_{2.5}$ Implementation Rule, 72 FR 20596.

The $PM_{2.5}$ Implementation Rule also provides guidance for the other elements of a state's attainment plan, including, but not limited to, emissions inventories, contingency measures, and motor-vehicle emissions budgets used for transportation conformity purposes. There are, however, three aspects of the preamble to the $PM_{2.5}$ Implementation Rule for which EPA received petitions requesting reconsideration. The specific guidance elements identified by petitioners pertain to the presumption or advance determination that compliance with the requirements of the Clean Air Interstate Rule (CAIR) automatically satisfies the requirements for RACT or RACM for NO_X or SO_2 emissions from electric generating unit (EGU) sources participating in regional cap and trade programs (*See* $PM_{2.5}$ Implementation Rule, section II.F.7.); the suggestion that the economic feasibility element of a RACT determination should include consideration of whether the cost of a measure is reasonable in light of the benefits (*See* $PM_{2.5}$ Implementation Rule, section II.F.5.); and the policy of allowing certain emissions reductions from outside the nonattainment area to be credited as meeting the RFP requirement (*See* $PM_{2.5}$ Implementation Rule, section II.G.5.). EPA has granted these petitions and intends to propose rulemaking to change these aspects of the $PM_{2.5}$ Implementation Rule. However, EPA's evaluation of the attainment plan for the Huntington-Ashland Area is not impacted by its reconsideration of any of these aspects of the $PM_{2.5}$ Implementation Rule because the plan does not rely upon them.

C. Attaining Data Determination and Finding of Attainment

On September 7, 2011, EPA determined that the Huntington-Ashland Area had attaining data for the 1997 Annual $PM_{2.5}$ NAAQS. 76 FR 55542. That determination was based on quality-assured, quality controlled and certified ambient air monitoring data that shows the area met the 1997 Annual $PM_{2.5}$ NAAQS. Furthermore, in accordance with CAA 179(c), EPA determined in the same notice that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010. This information is mentioned here in support of EPA's determination that Kentucky's attainment plan was sufficient to bring the Huntington-Ashland Area into attainment no later than the required attainment date of April 5, 2010.

III. What is included in Kentucky's attainment plan submittal?

Kentucky's $PM_{2.5}$ attainment plan submittal covers the Kentucky portion of the Huntington-Ashland Annual $PM_{2.5}$ nonattainment area, which is the only portion for which the Commonwealth has jurisdiction. Today's action regards only the Kentucky portion of the Huntington-Ashland Area. However, the modeling analysis provided with Kentucky's attainment plan documentation includes modeling results for the entire tri-state Area and the results of Ohio and West Virginia's demonstrations for their portions of the Area, for which the conclusions of attainment are consistent with that of Kentucky's.

In accordance with section 172(c) of the CAA and the $PM_{2.5}$ Implementation Rule, the attainment plan submitted by the DAQ for the Kentucky portion of the Huntington-Ashland Area includes (1) emissions inventories for the plan's base year (2002) and attainment year (2009); (2) an attainment demonstration; and (3) an insignificance finding for the mobile source contribution of $PM_{2.5}$ and NO_X. The attainment demonstration includes: (a) technical analyses that locate, identify, and quantify sources of emissions contributing to violations of the 1997 Annual $PM_{2.5}$ NAAQS; (b) analyses of future-year emissions reductions and air quality improvements expected to result from national and local programs; adopted emission reduction measures with schedules for implementation; and contingency measures required under section 172(c)(9) of the CAA. *See* 72 FR 20605.

To analyze future-year emission reductions and air quality improvements, Kentucky used regional modeling analyses developed through the Association for Southeastern Integrated Planning (ASIP). The ASIP was a collaborative modeling and technical analysis effort among the states of Kentucky, Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, Virginia and West Virginia to develop a regional assessment of the controls needed to achieve attainment of the 1997 $PM_{2.5}$ NAAQS and the 2006 8-hour ozone NAAQS. This regional modeling was performed in accordance 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'' (EPA–454/B–07–002, April 2007) (hereafter referred to as ''EPA's Modeling Guidance'').

IV. What is EPA's analysis of Kentucky's attainment plan submittal?

A. Attainment Demonstration

Consistent with CAA requirements (*see, e.g.,* section 172), and 40 CFR 51.1007, an attainment demonstration for a $PM_{2.5}$ nonattainment area must include a showing that the area will attain the annual and 24-hour standards as expeditiously as practicable. The demonstration must also meet the requirements of 40 CFR 51.112 and Part 51, Appendix W, and include inventory data, modeling results, and emissions reduction analyses on which the state has based its projected attainment. In the case of the Huntington-Ashland Area, the Area has already attained the standard. Thus, EPA is now proposing to determine that the attainment demonstration submitted by the Commonwealth was sufficient, and EPA is taking action to approve individual components that are necessary for the continued attainment and maintenance of the Area.

1. Pollutants Addressed

As discussed in section II.B. above, the $PM_{2.5}$ Implementation Rule requires states to identify and evaluate sources of $PM_{2.5}$ direct emissions and $PM_{2.5}$ attainment plan precursors. The rule provides that SO_2 is a $PM_{2.5}$ attainment plan precursor in all areas. The rule also sets forth the rebuttable presumptions that NO_X is a $PM_{2.5}$ attainment plan precursor in all areas and that ammonia and VOCs are not $PM_{2.5}$ attainment plan precursors. Neither Kentucky nor the EPA has found reason to reverse these presumptions for the Huntington-Ashland Area. Accordingly, Kentucky's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, SO_2, and NO_X in the Kentucky portion of the Huntington-Ashland Area.

2. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop comprehensive, accurate and current emissions inventories of all sources of the relevant pollutant or pollutants in the area. These inventories provide a detailed accounting of all emissions and emissions sources by precursor or pollutant. In addition, inventories are used in air quality modeling to demonstrate that attainment of the 1997 $PM_{2.5}$ NAAQS is as expeditious as

practicable and, if an attainment date extension beyond 2010 is needed, to support the need for such an extension. Emissions inventory guidance was provided in the April 1999 document, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,'' (EPA–454/R–99–006), which was updated in November 2005 (EPA–454/R–05–001) (hereafter referred to as ''EPA's Emissions Inventory Guidance''). Emissions reporting requirements were provided in the 2002 Consolidated Emissions Reporting Rule (CERR) (67 FR 39602). On December 17, 2008 (73 FR 76539), EPA promulgated the Air Emissions Reporting Requirements (AERR) to update emissions reporting requirements in the CERR and to harmonize, consolidate and simplify data reporting by states.

In accordance with the CERR and EPA's Emissions Inventory Guidance, the $PM_{2.5}$ Implementation Rule requires states to submit inventory information on directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors and any additional inventory information needed to support an attainment demonstration and (where applicable) an RFP plan.

$PM_{2.5}$ is comprised of filterable and condensable emissions. Condensable particulate matter (CPM) can comprise a significant percentage of direct $PM_{2.5}$ emissions from certain sources and are required to be included in national emissions inventories based on emission factors. Test Methods 201A and 202 are available for source-specific measurement of condensable emissions. However, the $PM_{2.5}$ Implementation Rule notes that there were issues raised by commenters related to availability and implementation of these test methods as well as uncertainties in existing data for condensable $PM_{2.5}$. EPA established a transition period during which EPA could assess possible revisions to available test methods and to allow time for states to update emissions inventories as needed to address direct $PM_{2.5}$, including condensable emissions. Because of the time required for this assessment, EPA recognized that states would be limited in how to effectively address CPM emissions and established a period of transition, up to January 1, 2011, during which state submissions for $PM_{2.5}$ were not required to address CPM emissions. Amendments to these test methods were proposed on March 25, 2009 (74 FR 12969), and finalized on December 21, 2010 (75 FR 80118). The amendments to Method 201A added a particle-sizing device for $PM_{2.5}$ sampling, and the amendments to Method 202 revised the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of CPM emissions.

The period of transition for establishing emissions limits for condensable direct $PM_{2.5}$ ended on January 1, 2011. $PM_{2.5}$ submissions made during the transition period are not required to address CPM emissions, however, states must address the control of direct $PM_{2.5}$ emissions, including condensable emissions, with any new action taken after January 1, 2011. Kentucky submitted the Huntington-Ashland Area attainment plan prior to January 1, 2011, and did not consider CPM in addressing the control of $PM_{2.5}$ emissions.

In July 2008, EarthJustice filed a petition requesting reconsideration of EPA's transition period for CPM emissions provided in the $PM_{2.5}$ Implementation Rule. In January 2009, EPA decided to allow states that have not previously addressed CPM to continue to exclude CPM for PSD permitting during the transition period. Today's action reflects a review of Kentucky's submittal based on current EPA guidance as described in the $PM_{2.5}$ Implementation Rule.

The 172(c)(3) emissions inventory is developed by the incorporation of data from multiple sources. States were required to develop and submit to EPA a triennial emissions inventory according to the CERR for all source categories (*i.e.,* point, area, nonroad mobile and on-road mobile). This inventory often forms the basis of data that are updated with more recent information and data that also is used in their attainment demonstration modeling inventory. Such was the case in the development of the 2002 emissions inventory that was submitted in the Commonwealth's attainment SIP for this Area. The 2002 emissions inventory was based on data developed with Visibility Improvement State and Tribal Association of the Southeast (VISTAS) contractors for the same ten states of the ASIP effort and submitted by the states to the 2002 National Emissions Inventory. Several iterations of the 2002 inventories were developed for the different emissions source categories resulting from revisions and updates to the data. This resulted in the use of version G2 of the updated data to represent the point sources' emissions. Data from many databases, studies and models (*e.g.,* vehicle miles traveled, fuel programs, the NONROAD 2002 model data for commercial marine vessels, locomotives and Clean Air Market Division, etc.) resulted in the inventory submitted in this SIP. The data were developed according to EPA's Emissions Inventory Guidance and a quality assurance project plan that was developed through VISTAS and approved by EPA. EPA agrees that the process used to develop this inventory was adequate to meet the requirements of the CAA, *e.g.,* CAA section 172(c)(3), and the implementing regulations.

Tables 1–5 below show the level of emissions in the Kentucky portion of the Huntington-Ashland Area for 2002 by pollutant, county, and emissions source category. The point, area, and nonroad values for Lawrence County in the December 8, 2008, submittal were for the entire county, not just the census block that EPA designated as nonattainment. On May 26, 2011, at the request of EPA, the Commonwealth submitted updated tables to include information on point source emissions from the designated census block and population based apportionment of the area and nonroad sectors to support the mobile source insignificance finding discussed further in Section IV.B. below. A copy of the May 26, 2011, clarification letter and updated tables can be found in the docket for this proposed action (EPA–R02–OAR–2010–0255) on the *www.regulations.gov* Web site. EPA is proposing to approve the emissions inventory for the Kentucky portion of the Huntington-Ashland Area as meeting the requirements of Section 172(c)(3) of the CAA.

TABLE 1—BASE AND ATTAINMENT YEAR VOC INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA

VOC (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Point	3083	3259	98	119	3181	3378
Area	780	775	374	357	1154	1132

TABLE 1—BASE AND ATTAINMENT YEAR VOC INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA—Continued

VOC (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Mobile	991	613	409	269	1400	882
Nonroad	312	256	223	271	535	527
Total	5166	4903	1104	1016	6270	5919

TABLE 2—BASE AND ATTAINMENT YEAR NO_X INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA

NO_X (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Point	7046	7281	17129	5730	24175	13011
Area	40	46	87	93	127	139
Mobile	1213	774	785	528	1998	1302
Nonroad	3319	3107	726	664	4045	3771
Total	11618	11208	18727	7015	30345	18223

TABLE 3—BASE AND ATTAINMENT YEAR SO_2 INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA

SO_2 (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Point	9711	10432	48874	47739	58585	58171
Area	542	578	96	102	638	680
Mobile	54	6	30	4	84	10
Nonroad	482	380	85	52	567	432
Total	10789	11396	49085	47897	59874	59293

TABLE 4—BASE AND ATTAINMENT YEAR $PM_{2.5}$ INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA

$PM_{2.5}$ (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Point	1256	1255	335	413	1591	1668
Area	712	748	216	219	928	967
Mobile	21	15	14	10	35	25
Nonroad	131	121	30	28	161	149
Total	2120	2139	595	670	2715	2809

TABLE 5—BASE AND ATTAINMENT YEAR AMMONIA INVENTORY FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA

Ammonia (tpy)	Boyd County		Lawrence County		KY portion total	
	2002	2009	2002	2009	2002	2009
Point	336	378	31	44	367	422
Area	38	38	28	28	66	66
Mobile	44	53	20	26	64	79
Nonroad	0	0	0	0	0	0
Total	418	469	79	98	497	567

EPA has reviewed Kentucky's emissions inventory and finds that it is adequate for the purposes of meeting section 172(c)(3) emissions inventory requirement. The emissions inventory is approvable because the emissions were

developed consistent with the CAA, implementing regulations and EPA guidance for emissions inventories. Additional emissions inventory information, including summary tables for the Ohio and West Virginia portions of the Huntington-Ashland Area, are included in Appendix E of Kentucky's attainment SIP and are located in the docket for this proposed action (EPA–R02–OAR–2010–0255) on the *www.regulations.gov* Web site.

3. Modeling

The $PM_{2.5}$ attainment demonstrations must include modeling that should be developed in accordance with EPA's Modeling Guidance. A brief description of the modeling used to support Kentucky's attainment demonstration follows. More detailed information can be found in Kentucky's December 3, 2010, SIP revision in the docket for this proposed action (EPA–R02–OAR–2010–0255) on the *www.regulations.gov* Web site.

Ambient $PM_{2.5}$ typically includes both primary (directly emitted) $PM_{2.5}$ and secondary $PM_{2.5}$ (e.g., sulfates and nitrates formed by chemical reactions in the atmosphere). Some of the physicochemical processes leading to the formation of secondary $PM_{2.5}$ may take hours or days, as may some of the removal processes. Thus, some sources of secondary $PM_{2.5}$ may be sources outside of the nonattainment area. To model a sufficient geographic area to take these processes into account, Kentucky' regional modeling domain covered an area slightly greater than the geographical area of the VISTAS/ASIP states in this attainment demonstration.

Kentucky, through the ASIP and VISTAS, conducted an analysis of the major contributing components of $PM_{2.5}$ in the Kentucky portion of the Huntington-Ashland Area. Specifically, organic carbon (OC) and sulfuric acid (SO_4) account for the largest contributions. The majority of OC can be attributed to biogenic emissions and SO_4 to emissions of SO_2. SO_2 emissions are primarily associated with the point source sector, accounting for approximately 98 percent of the SO_2 emission in the Huntington-Ashland Area. Emissions sensitivity modeling for the Huntington-Ashland Area indicated that SO_2 emissions reductions from EGUs in Kentucky, Tennessee, and West Virginia would have the greatest benefits for the Area. The VISTAS modeling also projects limited benefits to total $PM_{2.5}$ emissions from reductions of NO_X. The modeling performed by VISTAS showed that reductions of primary carbon from the mobile sector were more effective than reductions of either VOCs or NO_X from mobile sources. EPA agrees with Kentucky's assertion that controlling SO_2 from point sources is the most effective means of addressing attainment of the 1997 Annual $PM_{2.5}$ NAAQS in the Huntington-Ashland Area.

Model Selection and Inputs

The ASIP performed modeling for ozone and $PM_{2.5}$ for the 10 collaborating southeastern states, including Kentucky. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. The ASIP and/or 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, ozone, $PM_{2.5,}$ 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 2009 was carried out on a grid of 12×12 kilometer cells that covers the ten VISTAS states and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36×36 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 calendar year of 2002 as the best period of meteorology available for conducting the CMAQ modeling. As noted above, the VISTAS and ASIP states modeling was developed consistent with EPA's Emissions Inventory Guidance and 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 assessment of an attainment of the $PM_{2.5}$ NAAQS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the 2009 $PM_{2.5}$ control strategy. 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. A diverse set of statistical parameters from the EPA's Modeling Guidance was used to stress and examine the model and modeling inputs. Once the model performance of the 2002 base year was determined to be acceptable, the EPA model attainment test was used to assess whether attainment of the $PM_{2.5}$ NAAQS would be achieved in 2009. The DAQ provided the appropriate supporting documentation for all required analyses used to determine Kentucky's control strategy. The technical analyses and modeling used to assess attainment in 2009 for the Area is consistent with the CAA, EPA's $PM_{2.5}$ Implementation Rule and EPA's Modeling Guidance. EPA accepts the VISTAS and ASIP technical modeling to support the attainment SIP for the Area because the modeling system was chosen and simulated according to EPA's Modeling Guidance. For purposes of the Huntington-Ashland attainment demonstration, EPA agrees with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the assessment of $PM_{2.5}$ for the Kentucky attainment demonstration for this Area. Additional details on the ASIP and VISTAS modeling is included in the Kentucky SIP.

Modeling Results

The modeling results were used in a relative sense in concert with observed $PM_{2.5}$ air quality data (i.e., taking the ratio of future to present model predicted air quality and multiplying it times an ''ambient design value''). The ambient design value is an average of the three current design values (i.e., 2001, 2002, and 2003) that straddle the modeling base year (i.e., 2002). EPA

recommends using the average of the three design value periods which include the baseline inventory year. This average design value best represents the baseline concentrations, while taking into account the variability of meteorology and emissions (over a five-year period). This EPA attainment test approach should reduce some of the uncertainty involved with using absolute model predictions alone. Using the model in a relative sense also reduces the effects of uneven model performance and possible major biases in predicting absolute concentrations of one or more components. The ratio of future to present model predicted air quality resulted in relative reduction factors (RRF). The multiplication of the RRF by an ambient design value from the base year (i.e., 2002) provided estimates of future design values to determine if monitors and areas with monitors in the nonattainment area will comply with the annual $PM_{2.5}$ NAAQS.

EPA provided guidance to states and tribes for projecting $PM_{2.5}$ concentrations using a ''speciated modeled attainment test'' (SMAT) (EPA–454/B–07–002, April 2007). Once modeling for a projection year and a base year are complete, RRFs are computed for each component of $PM_{2.5}$ in the modeling domain. Modeling by Kentucky to assess attainment in the entire Huntington-Ashland Area used the following components of $PM_{2.5}$: SO_4, NO_3, directly emitted organic particles, and directly emitted inorganic particles. Ammonia is treated as part of SO_4 and NO_3 molecules, and water is assumed to be present at a constant mass in both the base year and projection year. For each monitoring location, the RRF for a component is computed as the ratio of the projection year divided by the base year modeled concentration for a three-by-three array of modeled grid cells centered on the monitoring location.

Projection year component concentrations are estimated by multiplying the RRFs times a monitoring based base year component concentration, determined by applying measured speciation data to the monitored total $PM_{2.5}$ design concentration. The sum of these estimated projection year component concentrations is the estimated projection year $PM_{2.5}$ concentration. If future estimates of $PM_{2.5}$ concentrations are less than the 1997 $PM_{2.5}$ NAAQS, then the modeling indicates attainment of the standard.

$PM_{2.5}$ includes a mixture of components that can behave independently from one another (e.g., primary vs. secondary particles) or that are related to one another in a complex way (e.g., different secondary particles). Thus, it is appropriate to consider the predicted future concentration of $PM_{2.5}$ to be the sum of the predicted component concentrations. *See* 72 FR 20608. As recommended in EPA's Modeling Guidance, Kentucky divided $PM_{2.5}$ into its major components and noted the future effects of already implemented strategies on each. The effect on $PM_{2.5}$ was estimated as a sum of the effects on individual components. Future $PM_{2.5}$ design values at specified monitoring sites were estimated by adding the future-year values of seven $PM_{2.5}$ components. All future site-specific $PM_{2.5}$ design values were below the concentration specified in the NAAQS; therefore, the Huntington-Ashland Area passed the SMAT evaluation.

EPA has also developed a software package called Modeled Attainment Test Software (MATS) which will spatially interpolate data, adjust the spatial fields based on model output gradients and multiply the fields by model calculated RRFs. EPA recommended that the Commonwealth provide MATS attainment test values for 2009 since the tool became available soon after Kentucky had drafted its attainment demonstration. The 2009 MATS values for the entire Huntington-Ashland Area also indicate attainment of the annual $PM_{2.5}$ NAAQS in 2009. Table 7 illustrates the current (2002 DVC) and future (2009 DVF) annual design values for 2009 for the monitors in the nonattainment area.

TABLE 7—2002 CURRENT AND 2009 PREDICTED ANNUAL $PM_{2.5}$ DESIGN VALUES (μG/M3)

Site No.	State	County	2002 Annual DVC	2009 Annual DVF
21–019–0017	KY	Boyd	14.9	12.6
39–087–0010	OH	Lawrence	15.7	13.7
39–145–0013	OH	Scioto	17.1	14.7
54–011–0006	WV	Cabell	16.5	14.4

Additional Analysis

Kentucky provided supplemental analysis to further support results from the modeled attainment tests. As a first step, Kentucky noted that the modeled attainment tests supported a conclusion that the proposed strategy will meet the air quality goals by the attainment year. As noted in section 7 of EPA's Modeling Guidance, corroboratory analyses should be used to help assess whether a simulated control strategy is sufficient to meet the NAAQS. One of the metrics identified in the guidance is the calculations of the percent change in the number of grid cells greater than or equal to 15.0 $\mu g/m^3$ in the nonattainment area. For Kentucky's analysis, cell counts of modeling data were tallied for both the 2002 baseline and 2009 attainment year modeling runs for a subset of the highest days from the base year and which coincide with the 29 days used in the model performance evaluation and modeling results discussed previously. The analysis indicates a 10 percent increase in the number of cells representing days with concentrations below 15.0 $\mu g/m^3$.

Kentucky conducted an additional unmonitored area analysis to ensure that a control strategy leads to reductions in $PM_{2.5}$ at other locations which could have baseline (and future) design values exceeding the NAAQS were a monitor deployed there. Consistent with EPA's Modeling Guidance, the ASIP determined the 2002 current year and 2009 projected $PM_{2.5}$ design values in the Huntington-Ashland Area using the 2002 typical and 2009 BaseG4 CMAQ 12 km modeling results. Appendix L of the Commonwealth's submittal contains maps which illustrate that the MATS projections for the unmonitored areas in Kentucky and the entire Huntington-Ashland Area will be below the $PM_{2.5}$ NAAQS by 2009.

EPA Analysis

Kentucky's $PM_{2.5}$ attainment demonstration submittal covers only the portion of the Huntington-Ashland Area for which Commonwealth has jurisdiction (Boyd County and a portion of Lawrence County). However, the modeling results for the West Virginia and Ohio portions of the Area reach conclusions of attainment which are

consistent with that of Kentucky. The technical analyses and modeling to assess attainment of the entire nonattainment Area were developed consistent with EPA's Modeling Guidance. The modeling system was chosen and simulated to develop a model performance evaluation of the nonattainment area to provide the necessary assurances and results that an assessment of future controls for attainment is merited. Application of the EPA modeled attainment test and the MATS indicated future design values that are less than 15.0 μg/m³ and consistent with attainment of the 1997 Annual $PM_{2.5}$ NAAQS. The additional analyses based on other regional modeling studies, including EPA and the Midwest RPO, support the modeling results developed by the ASIP and Kentucky. Finally, the area's status as having attained the standard further supports the modeling results.

Current Air Quality Analysis

As noted in section II.C. above, on September 7, 2011, EPA determined that the Huntington-Ashland Area had attaining data for the 1997 Annual $PM_{2.5}$ NAAQS based upon data for the 3-year period 2007–2009, with a design value (i.e., the highest 3-year average of annual mean $PM_{2.5}$ concentrations) of 14.3 μg/m³. In that same notice EPA noted that the Area also had attaining data for the 3-year period 2008–2010, with a design value of 13.1 μg/m³. These data, which have been quality-assured, certified, and recorded in EPA's Air Quality System (AQS), are summarized in Tables 8 and 9 below. In addition, monitoring data thus far available, but not yet certified, in the AQS database for 2011 show that this Area continues to meet the 1997 Annual $PM_{2.5}$ NAAQS. The continuing decrease in $PM_{2.5}$ concentrations in the Area supports Kentucky's determination that current measures were sufficient to bring the Area into attainment by no later than the required attainment date of April 5, 2010.

TABLE 8—2007–2009 ANNUAL AVERAGE CONCENTRATIONS IN THE HUNTINGTON-ASHLAND AREA

Site name	County	Site No.	Annual average concentration (μg/m³)
Huntington	Cabell, WV	54–011–0006	[1] 14.3
Ashland Primary (FIVCO)	Boyd, KY	21–019–0017	12.4
Lawrence County Hospital	Lawrence, OH	39–087–0010	[2] 13.3
Ironton Department of Transportation (DOT) [3]	Lawrence, OH	39–087–0012	12.2

TABLE 9—2008–2010 ANNUAL AVERAGE CONCENTRATIONS IN THE HUNTINGTON-ASHLAND AREA

Site name	County	Site No.	Annual average concentration (μg/m³)
Huntington	Campbell	54–011–0006	13.1
Ashland Primary (FIVCO)	Boyd	21–019–0017	11.4
Ironton DOT [4]	Lawrence	39–087–0012	12.2

4. Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT)

a. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology), and shall provide for attainment of the national primary ambient air quality standards.'' EPA interprets RACM, including RACT, under section 172 as measures that a state finds are both reasonably available and contribute to attainment as expeditiously are practicable in the nonattainment area. 40 CFR 51.1010; 72 FR 20586, 20612.

States are required to evaluate RACM/RACT for direct $PM_{2.5}$ emissions and all of the area's attainment plan precursors. 40 CFR 51.1002(c); 72 FR 20586,20589–97. The state must address SO_2 as a $PM_{2.5}$ attainment plan precursor and evaluate sources of SO_2 emissions in the state for control measures. The state must address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate sources of NO_X emissions in the state for control measures, unless the state and EPA provide an appropriate technical demonstration for a specific area showing that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the nonattainment area. Also, because EPA concluded that VOCs and ammonia are presumptively not regulatory precursors for $PM_{2.5}$, the state is not required to evaluate RACM/RACT for sources of VOCs or ammonia unless there is a determination supported by an appropriate demonstration that such emissions need to be regulated for expeditious attainment of the NAAQS in the specific area.

For $PM_{2.5}$ attainment plans, the $PM_{2.5}$ Implementation Rule requires a combined approach to RACM and RACT under subpart 1 of Part D of the CAA (''Plan Requirements for Nonattainment Areas/Nonattainment Areas in General''). Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technique documents or guidelines and does not identify specific source categories for state and EPA evaluation during attainment plan development. 72 FR 20586, 20610.

[1] West Virginia has a collocated monitor in place at the same site for quality assurance purposes. The primary monitor, and not the collocated monitor, is used to determine compliance with the $PM_{2.5}$ NAAQS. Since the collocated monitor takes fewer readings than the primary monitor, its average annual values may be unrepresentatively high. (*See* 40 CFR Part 50, Appendix N, 3(d)(1).)

[2] The LCH Site was shut-down in February 2008. The Ironton DOT site began operation on the same day the LCH Site ceased monitoring.

[3] The Ironton DOT site did not begin operation until February 2008.

[4] The Ironton DOT site began operation in February 2008 and thus did collect 75 percent for the first quarter of 2008. However, this was a new site and monitoring data did meet 75 percent completeness for the remainder of the quarter and for the subsequent quarters. As such, EPA does not consider the first quarter data to be incomplete.

Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation consistent with the section 172 definition. Because the variable nature of the $PM_{2.5}$ problem in different nonattainment areas may require states to develop attainment plans that address widely disparate circumstances, EPA determined not only that states should have flexibility with respect to RACM/RACT controls but also that in areas needing significant emission reductions, RACM/RACT controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. 72 FR 20586, 20612 and 20615. Thus, under the $PM_{2.5}$ Implementation Rule, RACT and RACM are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. 40 CFR 51.1010; 72 FR 20586, 20612.

The $PM_{2.5}$ Implementation Rule requires that attainment plans include the list of measures that a state considered and information sufficient to show that the state met all requirements for the determination of what constitutes RACM/RACT in a specific nonattainment area. 40 CFR 51.1010(a). In addition, the rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and to adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. If a measure or measures is not necessary for expeditious attainment of the NAAQS in the area, then by definition that measure is not RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS in that area. Any measures that are necessary to meet these requirements which are not already either federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. 72 FR 20586, 20614.

Guidance provided in the $PM_{2.5}$ Implementation Rule for evaluating RACM/RACT level controls for an area also indicates that there could be flexibility with respect to those areas that were predicted to attain the 1997 $PM_{2.5}$ NAAQS within five years of designation as a result of existing national or local measures. 72 FR 20586, 20612. In such circumstances, the state may conduct a more limited RACM/RACT analysis that does not involve additional air quality modeling. Moreover, the RACM/RACT analysis for such area would focus on a review of reasonably available measures, the estimation of potential emissions reductions, and the evaluation of the time needed to implement the measures. Thus, the $PM_{2.5}$ Implementation Rule guidance recommends that an analysis for those areas expected to attain within five years of designation as a nonattainment area for the 1997 $PM_{2.5}$ NAAQS may be a less rigorous than for areas expected to attain later.

A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the preamble to the $PM_{2.5}$ Implementation Rule. 72 FR 20586, 20609–20633.

b. Kentucky's Analysis of Pollutants and Sources for the Huntington-Ashland Area

Kentucky's analysis, which appears in chapter 7 of the attainment plan submission, evaluates sources of $PM_{2.5}$, SO_2, and NO_X located in the nonattainment area for potential control as RACM/RACT. The Commonwealth determined that controls of sources of VOCs or ammonia would not be necessary for expeditious attainment of the NAAQS in this area. EPA agrees that Kentucky's determination is supported by its analysis. The Commonwealth's determination with respect to which pollutants the plan should evaluate is discussed in chapter 1 of the submittal.

After evaluating which pollutants should be addressed in the attainment plan, the Commonwealth identified all source categories of those emissions located within the nonattainment area to determine available controls that could advance the attainment date by one year or more. *See* Appendix M of the attainment plan submittal. Based on the emissions inventory and other information, the Commonwealth identified several source categories as sources that should be evaluated for controls. Stationary source measure categories identified include stationary diesel engine retrofit, rebuild or replacements; new or upgraded emission control requirements for direct $PM_{2.5}$ emissions at stationary sources; improved capture of particulate emissions to increase the amount of $PM_{2.5}$ ducted to control devices; new or upgraded emission controls for $PM_{2.5}$ precursors at stationary sources; energy efficiency measures to reduce fuel consumption and associated pollutant emissions; and measures to reduce fugitive dust from industrial sites. Mobile source measure categories identified include on-road diesel engine retrofits for school buses, trucks and transit buses using EPA verified technologies; nonroad diesel engine retrofit, rebuild or replacement; diesel idling programs for trucks, locomotive, and other mobile sources; transportation control measures, including those listed in section 108(f) of the CAA and other transportation demand management and transportation systems management strategies; programs to reduce emissions or accelerate retirement of high emitting vehicles, boats, and lawn and garden equipment; emissions testing and repair/maintenance programs for on-road vehicles, nonroad heavy-duty vehicles and equipment; programs to expand use of clean burning fuels; low emissions specifications for equipment or fuel used for large construction contracts, industrial facilities, ship yards, airports, and public or private vehicle fleets; and opacity or other emissions standards for ''gross-emitting'' diesel equipment or vessels. Area source measure categories identified include new open burning regulations and/or measures to improve program effectiveness such as programs to reduce or eliminate burning of land clearing vegetation; programs to reduce emissions from woodstoves and fireplaces including outreach programs, curtailments during days with expected high ambient levels of $PM_{2.5}$, and programs to encourage replacement of woodstoves when houses are sold; controls on emissions from charbroiling or other commercial cooking operations; and reduced solvent usage or solvent substitution.

In accordance with 40 CFR 51.1010, the attainment demonstration component for a $PM_{2.5}$ nonattainment area SIP is required to demonstrate that all RACM (including RACT for stationary sources) necessary to demonstrate attainment as expeditiously as practicable have been adopted. The cumulative impact of implementing available measures must be considered in determining whether a particular emission reduction measure or set of measures is required to be adopted as RACM. Potential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more. Therefore, since Kentucky demonstrated attainment of the 1997 $PM_{2.5}$ NAAQS in the Kentucky portion of the Huntington-Ashland Area by the end of 2009, any RACM measures would have needed to be in effect at the beginning of 2008 to have had any potential to advance the attainment date by at least one year.

Through participation in regional planning efforts of the Southeast Regional Planning Organization, VISTAS and the ASIP, Kentucky has evaluated potential control measures to attain the fine particle. For the relevant source categories, the Commonwealth evaluated the potential control measures that would be considered reasonable for the Huntington-Ashland Area, in light of timing and other considerations consistent with EPA's guidance. DAQ determined that there were no additional measures that could be adopted by January 1, 2008. In addition, existing measures and measures planned for implementation by 2009 enabled the Huntington-Ashland Area to attain the 1997 $PM_{2.5}$ NAAQS. Therefore, no further actions on RACM or RACT are warranted.

c. Kentucky's Evaluation of RACM/RACT Control Measures for the Huntington-Ashland Area

In accordance with section 172 of the CAA, the Kentucky portion of the Huntington-Ashland Area has adopted all RACM, including RACT, needed to attain the standards ''as expeditiously as practicable.'' Kentucky's demonstration for attaining the 1997 $PM_{2.5}$ NAAQS in the Kentucky portion of the Huntington-Ashland Area is based on the following enforceable measures, as discussed in Chapter 5 of the plan: tier 2 vehicle standards; heavy-duty gasoline and diesel highway vehicle standards; large nonroad diesel engine standards; nonroad spark-ignition engines and recreational engines standards; combustion turbine MACTs; VOC 2-, 4-, 7-, and 10-year MACT standards; consent agreements; open burning bans; and fugitive emissions standards.

d. Proposed Action on RACM/RACT Demonstration and Control Strategy

EPA is proposing to approve Kentucky's evaluation of RACM/RACT control measures for the Kentucky portion of the Huntington-Ashland Area. As noted in section C. above, EPA has already determined that the Huntington-Ashland Area has attaining data for the 1997 Annual $PM_{2.5}$ NAAQS and met the standard by its applicable attainment date of April 5, 2010. EPA's guidance for the $PM_{2.5}$ Implementation Rule recommends that if an area was predicted through the attainment plan to attain the standard within five years after designation, then the state could submit a more limited RACM/RACT analysis and the state could elect not to do additional modeling.

In light of the fact that the Kentucky portion of the Huntington-Ashland Area is now attaining the standards, EPA proposes to conclude that the attainment plan meets the RACM/RACT requirements of the $PM_{2.5}$ Implementation Rule and that the level of control in the Commonwealth's attainment plan constitutes RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS. Because the $PM_{2.5}$ Implementation Rule defines RACM/RACT as that level of control that is necessary to bring the area into attainment as expeditiously as practicable, the current level of Federally enforceable controls on sources located within the Area is by definition RACM/RACT for this Area for this purpose, given the Area's status as attaining the standard.

5. Reasonable Further Progress

Section 172(c)(2) of the CAA and the $PM_{2.5}$ Implementation Rule require that attainment plans include a demonstration that reasonable further progress toward meeting air quality standards will be achieved through generally linear incremental improvement in air quality. For the 1997 $PM_{2.5}$ NAAQS, a state is required to submit a separate RFP plan for any area for which the state seeks an extension of the attainment date beyond 2010. The $PM_{2.5}$ Implementation Rule set forth that an area that demonstrates attainment within five years of the date of designation will be considered to have satisfied the RFP requirement and is not required to submit a separate RFP plan. *See* 40 CFR 51.1009(b). The Kentucky attainment plan submittal meets the RFP requirements for the Huntington-Ashland Area by demonstrating that the Area attained the 1997 $PM_{2.5}$ NAAQS by the 2010 attainment date.

6. Contingency Measures

In accordance with section 172(c)(9) of the CAA, the $PM_{2.5}$ Implementation Rule requires that $PM_{2.5}$ attainment plans include contingency measures. 40 CFR 51.1012 and 72 FR at 20642–20646. (April 25, 2007). Contingency measures are additional measures to be implemented in the event that an area fails to meet RFP or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without additional EPA or state action if the area fails to meet RFP or fails to attain by its attainment date and should contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy for attaining the standard and should provide for emission reductions equivalent to one year of RFP.

The Kentucky attainment plan describes the contingency measures for the Huntington-Ashland Area as being comprised of Federal measures that were already in place and that would take effect automatically, without further action by the Commonwealth or EPA, if the Area were to fail to attain the standard by its attainment date. As noted in section II.C. of this proposed rulemaking, EPA made a determination, based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 monitoring period, that the Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS by the applicable attainment date of April 5, 2010. Because EPA has determined, in accordance with CAA 179(c)(1), that the area attained by its required deadline, no contingency measures for failure to attain by this date need to be implemented. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. Since EPA has determined that the Area has attained by the attainment date, the contingency measures submitted by Kentucky are no longer necessary for the Huntington-Ashland Area to meet RFP requirements or to attain the annual $PM_{2.5}$ NAAQS by the attainment date.

7. Attainment Date

Kentucky provided a demonstration of attainment of the 1997 $PM_{2.5}$ NAAQS in the Huntington-Ashland Area by no later than five years after the Area was designated nonattainment. In accordance with the $PM_{2.5}$ Implementation Rule, areas such as this, demonstrating that they will attain the standard by April 5, 2010, attainment deadline, are considered to have satisfied the requirement to show RFP toward attainment and need not submit a separate RFP plan. For similar reasons, such areas are also not subject to a requirement for a mid-course review.

B. Insignificance Determination for the Mobile Source Contribution to $PM_{2.5}$ and NO_X Emissions

The CAA requires federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. *See, e.g.,* CAA section 176. This means that such actions will not cause or contribute to violations of a NAAQS; worsen the severity of an existing violation; or delay timely attainment of any NAAQS

or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their metropolitan transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the motor vehicle emissions budgets contained in a SIP.

For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria found at 40 CFR 93.118(e)(4). In certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(m). Insignificance determinations are based on a number of factors, including the percentage of motor vehicle emissions in context of the total SIP inventory; the current state of air quality as determined by monitoring data for the relevant NAAQS; the absence of SIP motor vehicle control measures; and the historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004.[5] Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII.B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review of EPA is subject to the adequacy and approval process for EPA's action on the SIP.

EPA made an insignificance finding through the transportation conformity adequacy process for NO_X and directly emitted $PM_{2.5}$ for the Kentucky portion of the Huntington-Ashland $PM_{2.5}$ nonattainment area on June 18, 2010 (75 FR 34734). As a result of EPA's insignificance finding, the Kentucky portion of the Huntington-Ashland Area was no longer required to perform regional emissions analyses for either directly emitted $PM_{2.5}$ or NO_X as part of future $PM_{2.5}$ conformity determinations for the 1997 Annual $PM_{2.5}$ NAAQS until such time that EPA reviewed and took action on the Huntington-Ashland Area's attainment plan (the subject of today's proposed action). EPA's June 18, 2010, insignificance finding for directly emitted $PM_{2.5}$ and NO_X through the adequacy process (effective on July 6, 2010) only relates to the Kentucky portion of the tri-state Huntington-Ashland Area.[6]

When EPA makes an insignificance determination through the adequacy process for transportation conformity, EPA notes that an adequacy determination does not imply that an insignificance determination in the SIP (i.e., in this case the attainment plan) will ultimately be approved. Consistent with EPA's adequacy review of Kentucky's December 3, 2008, attainment plan and the Agency's subsequent thorough review of the entire SIP submission, EPA is proposing to approve Kentucky's insignificance determination for the mobile source contribution of NO_X and $PM_{2.5}$ emissions to the overall $PM_{2.5}$ emissions in the Huntington-Ashland Area. As stated previously, the point, area, and nonroad values for Lawrence County in the December 8, 2008 submittal were for the entire county, not just the census block that U.S.EPA designated as nonattainment. The on-road mobile emissions were determined specifically for the designated portion of Lawrence County. On May 26, 2011, at the request of EPA, the Commonwealth submitted updated tables to include information on point source emissions from the designated census block and population based apportionment of the area and non-road sectors to support the mobile source insignificance finding.

EPA finds that Kentucky's SIP submittal meets the criteria in the transportation conformity rules for an insignificance finding for both NO_X and $PM_{2.5}$ contribution from motor vehicles in the Kentucky portion of the Huntington-Ashland Area. That is, EPA finds that the SIP submittal demonstrates that, for NO_X and $PM_{2.5}$, regional motor vehicle emissions are an insignificant contributor to the annual $PM_{2.5}$ concentrations in the Kentucky portion of the Area. This finding is based on the following factors:

- Tables 8.2–3 and 8.2–5 of Kentucky's submittal, as revised on May 26, 2011, demonstrate that the on-road NO_X and $PM_{2.5}$ emissions in 2009 for the Kentucky portion of the Area are only 7.43 percent and 0.97 percent, respectively, of the total emissions for the Kentucky portion of the Area.
- The tables also show that mobile source emissions of NO_X and $PM_{2.5}$ are declining. Specifically, NO_X and $PM_{2.5}$ mobile emissions were projected to decrease by approximately 28 percent and 40 percent, respectively, between the 2002 and 2009. The decrease in NO_X and $PM_{2.5}$ emissions were expected during a time when the VMT were expected to increase by 16 percent in the Kentucky portion of the Area.
- There have been no SIP requirements for motor vehicles control measures for the Kentucky portion of the Area.
- According to the Ashland Area Metropolitan Planning Organization (Ashland MPO) analysis, the projected mobile source emissions to 2030 indicate that there is no reason to expect highway motor vehicle growth that would cause a violation of the 1997 Annual $PM_{2.5}$ NAAQS.
- As described above, the area has attained the 1997 Annual $PM_{2.5}$ standard and EPA is proposing to approve the attainment plan for the Kentucky portion of the area.

As discussed above, the Area is not currently required to perform a regional emissions analysis for the Kentucky portion of the Huntington-Ashland Area based on the adequacy determination for the finding that on-road emissions of NO_X and direct $PM_{2.5}$ are insignificant contributors to the area's $PM_{2.5}$ air quality problem. Today EPA is proposing to approve that insignificance finding as part of the state's attainment plan for the Area. If finalized, such approval it would serve to confirm that the Kentucky portion of the Area is not required to perform a regional emissions analysis for either directly emitted $PM_{2.5}$ or NO_X as a part of future $PM_{2.5}$ conformity determinations for the 1997 Annual $PM_{2.5}$ standard.[7] $PM_{2.5}$ hot-spot

[5] Since the July 1, 2004, revision, 40 CFR 93.109 was again revised on March 24, 2010 because of the Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments update. In the 2004 preamble and rule, the insignificance determinations were outlined in 40 CFR 93.109(k). Due to renumbering of this section in the 2010 update, the provisions for insignificance determinations are now located at 40 CFR 93.109(m).

[6] In a letter dated October 23, 2009, EPA informed the State of Ohio that regional mobile emissions of direct $PM_{2.5}$ and NO_X are insignificant for transportation conformity purposes as well. That insignificance determination took effect on December 22, 2009. EPA will review the adequacy of the West Virginia submittal in a separate action.

[7] If Kentucky submits a redesignation request and maintenance plan for its portion of the Huntington-Ashland WV–KY–OH $PM_{2.5}$ nonattainment area and believes that on-road emissions of NO_X and direct $PM_{2.5}$ remain insignificant during the maintenance

Continued

analysis will continue to apply for required projects under 40 CFR 93.116 and 93.123(b) of the Transportation Conformity Rule.

Weighing all the factors for an insignificance finding, particularly the minor contribution of mobile source NO_X and $PM_{2.5}$, EPA has determined that the NO_X and $PM_{2.5}$ contribution from motor vehicles emissions to the Annual $PM_{2.5}$ pollution for the Kentucky portion of the Area are insignificant. EPA's insignificance finding should be considered and specifically noted in the transportation conformity documentation that is prepared for this area.

The insignificance determination that Kentucky submitted for the Huntington-Ashland Area was developed with projected mobile source emissions derived using the MOBILE6 motor vehicle emissions model. EPA is proposing to approve the inventory and the insignificance determination because this model was the most current model available at the time Kentucky was performing its analysis. However, EPA has now issued an updated motor vehicle emissions model known as Motor Vehicle Emission Simulator or MOVES. In its announcement of this model, EPA established a two-year grace period for continued use of MOBILE6 (extending to March 2, 2012), after which states (other than California) must use MOVES in conformity determinations for transportation plans and transportation improvement programs.

V. Proposed Action

EPA is proposing to approve Kentucky's annual $PM_{2.5}$ attainment plan for the Kentucky portion of the Huntington-Ashland Area. EPA has determined that the SIP meets applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA is proposing to approve Kentucky's attainment demonstration, including the RACM/RACT analysis; RFP analysis, base-year and attainment-year emissions inventories; and, for transportation conformity purposes, an insignificance determination for $PM_{2.5}$ and NO_X for the mobile source contribution to ambient $PM_{2.5}$ levels for the Commonwealth's portion of the Huntington-Ashland Area. The requirement for a RFP plan is satisfied because Kentucky demonstrated attainment of the 1997 $PM_{2.5}$ NAAQS in the Area by April 2010. Also, because EPA has determined that the Area has attained by the attainment date, the contingency measures submitted by Kentucky are no longer necessary for the Huntington-Ashland Area to meet RFP requirements or to attain the annual $PM_{2.5}$ NAAQS by the attainment date.

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 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 proposed 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 proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: January 20, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

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period, the maintenance plan will need to include information to support a finding that on-road emissions of NO_X and direct $PM_{2.5}$ continue to be insignificant during the maintenance period. The insignificance finding for the attainment demonstration does not automatically continue to apply to the maintenance plan.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2008–0334; FRL–9621–7]

RIN 2060–AQ89

National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of reconsideration of final rule.

SUMMARY: On October 29, 2009, the EPA promulgated national emission standards for the control of hazardous air pollutants for nine area source categories in the chemical manufacturing sector: Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production and Synthetic Rubber Manufacturing. Following that action, the Administrator received a petition for reconsideration. In response to the petition, the EPA is reconsidering and requesting comment

on several provisions of the final rule. The EPA is also proposing certain revisions to its approach for addressing malfunctions and taking comment on those revisions. The EPA is further soliciting comment on the standards applicable during startup and shutdown periods, as set forth in the final rule. Additionally, the EPA is proposing amendments and technical corrections to the final rule to clarify applicability and compliance issues raised by stakeholders subject to the final rule.

DATES: *Comments.* Comments must be received on or before March 30, 2012.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by February 9, 2012, a public hearing will be held on February 14, 2012. For further information on the public hearing and requests to speak, contact Ms. Janet Eck at (919) 541–7946 to verify that a hearing will be held. If a public hearing is held, it will be held at 10 a.m. at the EPA's Environmental Research Center Auditorium, Research Triangle Park, North Carolina, or an alternate site nearby.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0334, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2008–0334.
- *Fax:* (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2008–0334.
- *Mail:* U.S. Postal Service, send comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2008–0334.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0334. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Nick Parsons, Refining and Chemicals Group (E143–01), Sector Policies and Programs Division, Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5372; fax number: (919) 541–0246; email address: *parsons.nick@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

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A red-line version of the regulatory language that incorporates the changes in this action is available in the docket.

I. General Information

A. Does this notice of reconsideration apply to me?

The regulated categories and entities potentially affected by this action include:

Industry category	NAICS Code [1]	Examples of regulated entities
Chemical Manufacturing ...	325	Chemical manufacturing area sources that use as feedstock, generate as byproduct or produce as product, any of the hazardous air pollutants (HAP) subject to this subpart except for: (1) Processes classified in NAICS Code 325222, 325314 or 325413; (2) processes subject to standards for other listed area source categories[2] in NAICS Code 325; (3) certain fabricating operations; (4) manufacture of photographic film, paper and plate where material is coated or contains chemicals (but the manufacture of the photographic chemicals is regulated); and (5) manufacture of radioactive elements or isotopes, radium chloride, radium luminous compounds, strontium and uranium.

[1] North American Industry Classification System.
[2] The source categories in NAICS Code 325 for which other area source standards apply are: Acrylic Fibers/Modacrylic Fibers Production, Chemical Preparation, Carbon Black, Chemical Manufacturing: Chromium Compounds, Polyvinyl Chloride and Copolymers Production, Paint and Allied Coatings and Mercury Cell Chlor-Alkali Manufacturing.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this reconsideration action. To determine whether your facility may be affected by this reconsideration action, you should examine the applicability criteria in 40 CFR 63.11494 of subpart VVVVVV (National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources). If you have any questions regarding the applicability of the final rule to a particular entity, consult either the air permit authority for the entity or your EPA regional representative, as listed in 40 CFR 63.13.

B. What should I consider as I prepare my comments to the EPA?

Submitting CBI. Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or email. Send or deliver information identified as CBI to only the following address: Mr. Nick Parsons, c/o OAQPS Document Control Officer (Room C404–02), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attn: Docket ID No. EPA–HQ–OAR–2008–0334.

Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to the EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit a disk or CD–ROM that does not contain CBI, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

C. How do I obtain a copy of this document and other related information?

Docket. The docket number for this action and the final rule (40 CFR part 63, subpart VVVVVV) is Docket ID No. EPA–HQ–OAR–2008–0334.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this action is available on the WWW through the Technology Transfer Network (TTN) Web site. Following signature, a copy of this notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

II. Background Information

Section 112(d) of the Clean Air Act (CAA) requires the EPA to establish national emission standards for hazardous air pollutants (NESHAP) for both major and area sources of HAP that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP. An area source is a stationary source that is not a major source.

On October 29, 2009 (74 FR 56008), the EPA issued the NESHAP for the nine chemical manufacturing area source (CMAS) categories that were listed pursuant to CAA sections 112(c)(3) and 112(k)(3)(B). The nine area source categories are Agricultural Chemicals and Pesticides Manufacturing, Cyclic Crude and Intermediate Production, Industrial Inorganic Chemical Manufacturing, Industrial Organic Chemical Manufacturing, Inorganic Pigments Manufacturing, Miscellaneous Organic Chemical Manufacturing, Plastic Materials and Resins Manufacturing, Pharmaceutical Production and Synthetic Rubber Manufacturing.

CAA section 112(k)(3)(B) directs the EPA to identify at least 30 HAP that, as a result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. The EPA implemented this provision in 1999 in the Integrated Urban Air Toxics Strategy, (64 FR 38715, July 19, 1999) (Strategy). Specifically, in the Strategy, the EPA identified 30 HAP that pose the greatest potential health threat in urban areas, and these HAP are referred to as the ''30 urban HAP.'' Section 112(c)(3) of the CAA requires the EPA to list sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the emissions of the 30 urban HAP are subject to regulation. The EPA completed this requirement in 2011 (76 FR 15308, March 21, 2011). The chemical manufacturing area source categories were listed to satisfy this requirement for 15 of the 30 urban HAP.[1] Pursuant to CAA section 112(d)(5), the NESHAP reflect generally available control technologies or management practices (GACT). The NESHAP apply to each chemical manufacturing process unit (CMPU) that uses, generates or produces any of the 15 urban HAP for which the area source categories were listed (collectively ''chemical manufacturing urban HAP'' or ''Table 1 HAP'').

On February 12, 2010, following promulgation of the final rule, the EPA received a petition for reconsideration from the American Chemistry Council (ACC) and the Society of Chemical Manufacturers & Affiliates (SOCMA) (''Petitioners''). A copy of this petition is provided in the docket (see Docket ID No. EPA–HQ–OAR–2008–0334). Petitioners, pursuant to CAA section 307(d)(7)(B), requested that the EPA

[1] The 15 urban HAP for which the chemical manufacturing area source categories were listed are identified in table 1 of the final rule.

reconsider six provisions in the rules: (1) The requirement that major sources that installed air pollution controls after 1990, and, as a result, became area sources, obtain a title V permit; (2) the requirement that sources subject to the final rule and any overlapping provision in another rule comply with each provision independently, or with the most stringent requirements of each rule; (3) the requirement that leak inspections include direct and proximal (thorough) inspection of all areas of potential leak within the CMPU; (4) the requirement that process vessels in HAP service be equipped with a cover or lid that must be in place at all times when the vessel contains HAP, except for material addition and sampling; (5) the requirement to conduct leak inspections while the equipment is in HAP service; and (6) the requirement that a CMPU include all equipment and processes used to produce a ''family of materials.'' The arguments in support of these requests are provided in the petition and described briefly below. Petitioners also requested that the EPA stay the effectiveness of these provisions of the rule to save many facilities from needlessly having to file the initial notifications required by the final rule.

On June 15, 2010, the EPA sent a letter to Petitioners informing them that the EPA was granting the request for reconsideration on at least one issue raised in the petition, and that the agency would identify the specific issue or issues for which it was granting reconsideration in the reconsideration notice that would be published in the **Federal Register**. The letter also indicated that the EPA considered the request for a stay to be moot because the due date for initial notifications had already passed.

III. Actions We Are Taking

In this notice, we are granting reconsideration of, and requesting comment on, the six issues raised by Petitioners in their petition for reconsideration. *Section IV* of this preamble summarizes these issues and discusses our proposed responses to each issue.

We are also proposing additional provisions related to malfunctions and requesting comment on the provisions in the final rule that address periods of startup and shutdown. We are also proposing amendments to, and taking comment on, the standards applicable to metal HAP process vents. Finally, we are proposing technical corrections to certain applicability and compliance provisions in the final rule.

We are seeking public comment only on the issues specifically identified in this notice. We will not respond to any comments addressing other aspects of the final rule or any other related rulemakings.

IV. Discussion of Issues for Reconsideration

This section of the preamble contains the EPA's basis for our proposed responses to the issues identified in the petition for reconsideration. We solicit comment on all proposed responses and revisions discussed in the following sections.

A. Title V Permitting Requirements

The EPA proposed to exempt all chemical manufacturing area sources from the requirement to obtain a title V permit. In the final rule, in response to comments and after a full review of the record, the EPA stated that it was not finalizing the exemption for major sources that became synthetic area sources by installing air pollution controls after 1990. Among other things, the agency explained that we made the change, in part, because we failed to consider the large number of such sources in proposing the exemption, and because these sources had uncontrolled emissions that made them much more like major sources. See 74 FR 56013, October 29, 2009. Petitioners maintain that the proposed exemption of CMAS facilities from title V permitting requirements was fully and correctly justified in the preamble to the proposed CMAS rule. The Petitioners also claim:

- The EPA's assertion in the final rule that facilities that installed control equipment to become synthetic area sources are ''generally larger and more sophisticated'' than other chemical manufacturing area sources contradicts our earlier finding in the proposed rule that many of the facilities that would be affected by the CMAS rule are small entities without the resources to comply with permitting requirements. The Petitioners also state that approximately 87 percent of SOCMA members and 45 percent of ACC members are small businesses, which they cite as support for the proposed finding.
- The final rule fails to recognize that, in order for a facility to be treated as a synthetic area source due to the installation of controls, the facility has a legal duty to use the equipment because the control requirement must be federally enforceable. Further, the Petitioners state that, ''In order to have been approved by the EPA, a state operating permit program that imposes a federally enforceable requirement to use control equipment must provide the public with notice and an opportunity to comment on draft permits * * * and must also provide for emissions reporting and public availability of reported information.''
- The final rule is contrary to the decision in *Alabama Power Co.* v. *EPA,* which held that a source's potential to emit is determined by its design capacity and the anticipated functioning of the air pollution control equipment. Thus, the petitioners claim that whether a facility is a natural area source or a synthetic area source (due to either operational limits or the use of control devices) should not matter for regulatory purposes.
- The EPA argued in the area source rules for asphalt processing/asphalt roofing manufacturing, and paint and allied products manufacturing, that state-delegated programs are sufficient to assure compliance, and that it is not more difficult for citizens to enforce the NESHAP absent a title V permit. According to the Petitioners, these statements are equally, if not more, true for chemical manufacturing synthetic area sources.
- Title V requirements will impose substantial transactional and compliance costs on subject facilities, and limit their flexibility to respond to market opportunities.

In conclusion, Petitioners suggest that we should exempt all chemical manufacturing area sources from the requirement to obtain a title V permit consistent with the proposed rule. We reviewed our rationale, as stated in the preamble to the final rule (74 FR 56013–56014) and summarized below, for the final title V permitting requirement for facilities that became synthetic area sources by virtue of installing air pollution control devices after 1990. We continue to believe that requiring title V for synthetic area sources that installed controls to become area sources is appropriate; therefore, we are not proposing to exempt such sources from the requirement to obtain a title V permit. We are, however, making changes to the applicability of the provision at issue. Instead of requiring a title V permit for all synthetic area sources that installed air pollution controls in order to become an area source, regardless of whether the controls were installed on an affected CMPU, we are now proposing to only require a title V permit for a synthetic area source if air pollution controls were installed on at least one CMPU subject to the final rule in order to become an area source. Such a limitation would be consistent with the standards in the final rule that are applicable only to the CMPU that emit one of the chemical manufacturing urban HAP. We are also

proposing to add provisions that inform sources when they must submit a title V permit application consistent with the title V regulations at 40 CFR part 70 and 40 CFR part 71.

Pursuant to section 502(a) of the CAA, the Administrator may ''exempt one or more [area] source categories (in whole or in part) from the requirements of [title V] if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome * * *.'' In December 2005, in a national rulemaking, the EPA interpreted the term ''unnecessarily burdensome'' in CAA section 502, and developed a four-factor balancing test for determining whether title V is unnecessarily burdensome for a particular area source category, such that an exemption from title V is appropriate. See 70 FR 75320, December 19, 2005 (Exemption Rule). The EPA evaluated the chemical manufacturing area source categories pursuant to the four-factor balancing test in the proposed rule, and determined that title V permitting was unnecessarily burdensome. 73 FR 58371–58373. However, as stated above, the EPA did not finalize the exemption for synthetic area sources that became area sources by installing air pollution controls after November 15, 1990, in part, because the agency failed to consider the large number of such sources in proposing the exemption. 74 FR 56013. We explained the reasons for our oversight, and then concluded that title V was not unnecessarily burdensome and provided a reasoned basis for that conclusion, as discussed below. 74 FR 56013–56014.

In the preamble to the final rule, we noted that the chemical manufacturing area source categories are different from other area source categories we have exempted because the categories include a large number of synthetic area sources (major sources that installed air pollution controls to become area sources) and the sources in the other categories generally have very low emissions of HAP before control. We then stated that at least 10 percent of the estimated 75 facilities that are synthetic area sources for HAP by virtue of installing controls have uncontrolled HAP emissions over 100 tpy. We also indicated that our information showed that many of the sources are located in cities, and often in close proximity to residential and commercial centers where large numbers of people live and work. We further stated that these synthetic area sources have significantly higher emissions potential when uncontrolled than the other sources in the chemical manufacturing area source categories, and that they are much more like the major sources of HAP subject to the Hazardous Organic Chemical Manufacturing NESHAP (HON) and the Miscellaneous Organic Chemical Manufacturing NESHAP (MON). For these reasons, and other reasons set forth in the preamble to the final rule, we determined that ''requiring additional public involvement and compliance assurance requirements through title V is important to ensure that these sources are maintaining their emissions at the area source level, and, while there is some burden on the affected facilities, we think that the burden is not significant because these facilities are generally larger and more sophisticated than the natural area sources and sources that took operational limits to become area sources.'' 74 FR 56014.

Contrary to the Petitioners' first assertion, we do not believe that there is a conflict between our finding that many CMAS facilities are small entities that lack the technical and financial resources to comply with title V, and our finding that CMAS facilities that are synthetic area sources due to the use of control devices are generally larger and more sophisticated than other facilities covered by the final rule. The fact that nearly all SOCMA members are small businesses does not, by itself, counter these findings. As we stated in the preamble to the final rule, an estimated 450 CMAS facilities have processes that would be subject to the rule. Of those, we estimated that 75 are synthetic area sources by virtue of add-on controls, and only 47 of these facilities were estimated to need a new title V permit because the remainder of the sources are already subject to title V for other reasons. Of the 47 sources that would require a new title V permit under the requirement in the final rule, we estimated that at least two-thirds of these facilities are large entities. Since we do not know whether the add-on controls at these 75 facilities are installed on a CMPU subject to the final rule, we cannot estimate the total number of facilities that would be required to obtain a new title V permit under this proposed revision to the title V permit requirement. However, we believe that it would be less than the 47 facilities that would have required a new title V permit under the final rule requirement. Based on information from SOCMA, approximately 270 member companies are small businesses. However, it is not clear how many of these companies have facilities that are subject to the CMAS rule, how many of the subject facilities are synthetic area sources for HAP emissions due to the use of control devices or how many of the synthetic area sources for HAP emissions are subject to title V permitting requirements for other reasons. The information provided by Petitioner ACC is similarly vague on this issue.

The Petitioners also argue that the title V requirement is not appropriate because: (1) State operating permits that impose a federally enforceable requirement must provide the public with notice and the opportunity to comment on the draft permit; (2) synthetic area source limits must be federally enforceable pursuant to the definition of ''potential to emit'' at 40 CFR 63.2, and that it should not matter whether an area source is synthetic or natural; (3) the EPA has determined in other area source rules that state-delegated programs and Federal enforceability of the standards is sufficient, and that determination is equally applicable to the area sources subject to title V in this rule; and (4) the requirement to obtain a title V permit will impose substantial compliance costs and reduce flexibility at the subject facilities. We are not proposing changes to the title V permitting requirement based on these arguments because we do not believe that they support a change in our position. First, while it is true that the EPA regulations require Federal enforceability of limitations on potential to emit HAP, Petitioners did not provide any information as to the level of public participation required to obtain such limits and whether the level of participation was as comprehensive as that required pursuant to title V. Even if Petitioners could demonstrate that the level of public participation was comparable to that required under title V, our determination would not be altered on that issue alone because title V has other important requirements that may not apply to synthetic area sources that are not subject to title V (*e.g.,* the requirement to annually certify compliance with all applicable requirements). Second, the EPA disagrees that natural and synthetic area sources must be treated the same. As stated in the preamble to the final rule, ''[synthetic area source] facilities are generally larger and more sophisticated than the natural area sources and sources that took operational limits to become area sources'' (74 FR 56014). Third, we explained in the preamble to the final rule that the chemical manufacturing area sources are not similar to other area source categories that we have exempted because of the

large number of synthetic area sources that installed add-on controls and the high volume of pre-control device HAP emissions from the chemical manufacturing area sources that added controls as compared with other area sources. As these synthetic area sources have essentially the same pre-control device HAP emissions potential as a major source chemical manufacturing facility, we believe that the title V permit requirement will help ensure that these control devices remain in place and that these sources maintain their area source status. Since it is possible that the non-operation, failure or underperformance of a single control device could result in a source within this category exceeding the major source emission threshold (10 tpy or more of any single HAP or 25 tpy or more of any combination of HAP), we believe that the additional scrutiny that permitting authorities place on sources with title V permits is warranted. Finally, Petitioners have provided no information that demonstrates that the cost of compliance for affected facilities will, in fact, significantly burden the sources subject to the title V requirement, or that such requirement will limit operational flexibility. We request comments and information that address these issues, including information and requirements that are required by state operating permit programs, so that we can more thoroughly evaluate applicability of title V for the identified sources.

As stated above, we are proposing changes to the applicability of the title V permit requirement to synthetic area sources that installed controls. The proposed changes more clearly identify the sources subject to title V as those that route (or have routed) emissions from at least one process unit subject to the final rule to a control device(s) that is required to maintain synthetic area source status at the facility, which will likely reduce the number of sources required to obtain a title V permit, if promulgated. Specifically, because the standards apply only to CMPU that meet the specific applicability criteria in the rule, we request comment on whether the title V permitting requirement should be applicable only if one or more of the CMPU that are subject to the final standards are controlled by the air pollution control equipment necessary for the facility to maintain area source status. We are also proposing to include language that informs sources subject to title V requirements when they must submit a title V permit application. The EPA is including these new provisions because, on March 14, 2011, the agency issued a final rule staying the requirement to obtain a title V permit until the final reconsideration rule is published in the **Federal Register**. 76 FR 13514. Because the stay will be lifted once the final rule is published in the **Federal Register**, we determined it was necessary to include an application deadline for those existing sources currently subject to the final rule to avoid confusion as to when title V permit applications would be due. The proposed application deadline for existing sources provides the full 12 months otherwise available to sources newly subject to title V pursuant to the EPA regulations at 40 CFR part 70 and 40 CFR part 71. See 40 CFR 70.5(a)(1) and 40 CFR 71.5(a)(1). We also propose to include a provision indicating the time available for new sources and existing sources that become subject to the rule after the effective date to submit a title V permit application.[2] We solicit comment on these proposed changes to the final rule.

Additionally, we are soliciting comment on the promulgated final rule requirement that required a facility to obtain a title V permit if emissions from any process unit are (or have been) routed to the control device(s) that is required to maintain synthetic area source status at the facility.

We are requesting comment with supporting rationale on the requirement, as specified in this proposed rule and the promulgated final rule requirement outlined above. We are also interested in information that would allow us to better estimate the burden under the requirement in this proposed rule and the alternative. For example, we are interested in results of any surveys that document: (1) The percentage and/or number of CMAS facilities that are synthetic area sources for HAP emissions because they use federally-enforceable control devices; (2) the percentage and/or number of such facilities that are using the control devices to control emissions from at least one CMAS CMPU; (3) the financial burden of obtaining a title V permit compared to sales; and (4) the percentage and/or number of such facilities that are not already subject to title V requirements for other reasons. We are not taking comment on our decision in the final rule to exempt from title V chemical manufacturing areas sources that are natural area sources or that took operational limits to become area sources.

B. Requirements When Other Rules Overlap With the Final Rule

Petitioners note that their comments on the proposed rule urged the EPA to include provisions in the final rule that would minimize the burden associated with overlapping provisions between the CMAS rule and other rules. Specifically, they recommended that the CMAS rule include provisions to allow a facility subject to the CMAS rule and any other applicable area or major source rule to opt to comply with either, and noted that such an approach has been taken in many other rules. In response to those comments, we added provisions to address overlapping requirements in the final rule. See 40 CFR 63.11500. However, Petitioners consider the overlapping rule requirements in the final rule, which specify that a facility may elect to comply with the most stringent provisions of the applicable rules as an alternative to complying fully with each rule independently, to be ''unprecedented, burdensome, and highly problematic.'' According to the Petitioners, concerns with the alternative are that: (1) There can be uncertainty regarding which provision is more stringent; (2) facilities will be at risk that the EPA or a delegated authority will subsequently disagree with the source's determination; and (3) the effort necessary to construct a matrix of applicable requirements and determine which are the most stringent will exceed available staff and financial resources of many area sources. In addition, Petitioners state that complying in every respect with two overlapping rules is bound to involve substantial duplication, and, in some cases, may not be possible due to conflicts between the two rules. For these reasons, Petitioners recommend that we either propose to eliminate the final language or request comment on it.

We disagree with the Petitioners' assertion that the requirements in the final rule are unprecedented and procedurally invalid. In the absence of the language in the final rule, a facility would be required to comply with all applicable requirements in both the CMAS rule and all other applicable rules, regardless of whether some equipment is subject to more than one rule. The final CMAS rule merely made explicit the implicit requirement to comply with all applicable standards. It was in response to Petitioners' comments that the agency provided an

[2] Existing sources may become subject to the NESHAP for CMAS after the effective date of the standards because the final rule bases applicability on the use of chemical manufacturing urban HAP (Table 1 HAP) in a CMPU. 40 CFR 63.11494. If a source begins using a Table 1 HAP after the effective date, the facility will be subject to the CMAS standards, and, if the source is a synthetic area source that installed controls, the source will be subject to title V.

overlapping requirements alternative that allows a facility to identify and comply with only one set of requirements (*i.e.,* the most stringent requirements in the overlapping rules). The alternative was intended as a means of reducing the compliance burden without diminishing the level of environmental protection provided by each rule.

We did not include language that defines the more stringent requirements, as found in other rules, due to the great variety in characteristics of CMAS processes and the wide variety of compliance options in both the CMAS rule and overlapping rules. This variety makes it difficult to develop language that would not inadvertently allow a CMAS facility to comply with requirements less stringent than those contained in 40 CFR part 63, subpart VVVVVV, or less stringent than the required control level in an overlapping rule. Furthermore, as noted in the economic and control cost impacts analyses (see Docket ID No. EPA–HQ–OAR–2008–0334–0079), we expect that most CMAS facilities will be subject to only the management practices in subpart VVVVVV. For those sources, we anticipate that it generally will not be difficult or burdensome to determine which requirements in subpart VVVVVV and an overlapping rule are the most stringent. For those sources that are unable to determine the more stringent requirement between subpart VVVVVV and an overlapping requirement, we believe it would be more appropriate to address those situations on a case-by-case basis.

We are granting reconsideration of the overlapping provisions requirement in 40 CFR 63.11500 of the final rule to allow comment on both the language in the final rule and any alternative suggestions. Specifically, we are interested in language that would reduce the compliance burden for the CMAS rule and any overlapping rules combined, yet assure that all requirements in the CMAS rule are met. We are also interested in specific examples of requirements in overlapping rules that conflict with requirements in the CMAS final rule.

C. Requirement To Conduct Direct and Proximal Leak Inspections

In the final rule, the EPA revised the provision for inspections to require that facilities conduct a ''direct and proximal (thorough) inspection of all areas of potential leak within the CMPU.'' Petitioners object to the requirement in the final rule to conduct ''direct and proximal (thorough)'' inspections because they believe it requires inspections without regard to safety or difficulty of access. Petitioners also note that areas that are difficult to inspect or unsafe to inspect or monitor are exempted from regular inspection requirements in other rules, and they point out that, in their comments on the proposed CMAS rule, they requested clarification that sensory inspections may be done from a distance when equipment is either inaccessible or unsafe for close visual inspection. Therefore, Petitioners maintain that the agency should either propose to eliminate the direct and proximal inspection requirement or request comment on it.

We have determined that the inspections required in the final rule require control that is more stringent than GACT because we are not aware of any facility conducting direct and proximal inspections of all process vessels and equipment. For this reason, and to address Petitioners' concerns, we are proposing to delete the requirement for direct and proximal inspections. However, we want to assure that sensory inspections be performed at distances such that the results are meaningful.

As a result, we are proposing that the amended rule would specify that a facility must conduct quarterly sensory inspections of all equipment and process vessels, provided these methods are capable of detecting leaks within the CMPU (*i.e.,* the inspector is within sufficient proximity to the equipment that leaking equipment can be detected by sight, sound or smell). We are not, however, proposing to exempt equipment that is difficult or unsafe to monitor. Rules that provide such exemptions do so because they require instrument monitoring that relies on being able to locate the instrument probe very close to the equipment being inspected *(e.g.,* see 40 CFR part 63, subparts TT and UU). Sensory monitoring does not require intimate contact with each piece of equipment to be effective at identifying leaks. In addition, due to the wide variety of design and operating conditions throughout the source category, we also are not proposing criteria regarding an acceptable distance for inspection or the types of conditions under which the inspection may be conducted from a distance. Our intent is that each facility should conduct inspections as close as practical to the equipment to be able to detect leaks while also following procedures contained in site-specific safety plans. The proposed requirements would be consistent with sensory inspection requirements in 40 CFR part 63, subpart R. We request comment on both the direct and proximal language in the final rule and these proposed revisions.

D. Requirement for Covers or Lids on Process Vessels

We proposed to require process vessels in HAP service be closed ''except when operator access is necessary.'' 73 FR 58377 (proposed 40 CFR 63.11495(a)). The final rule requires process vessels in HAP service to be equipped with a cover or lid that must be in place at all times when the vessel contains HAP, ''except for material addition and sampling.'' 40 CFR 63.11495(a)(1). Petitioners contend that compliance with this management practice requirement is impossible due to safety issues and because it does not consider the need to take material out of a vessel or to conduct maintenance. Petitioners are particularly concerned that the requirement does not appear to allow openings for any type of maintenance, even after the process is shut down, and only trace levels of HAP are present. In subsequent correspondence, Petitioners suggest that their concerns would be resolved if we modify the rule so that the cover or lid requirement applies only when a process vessel is ''in use'' (which is a concept that they state can be easily applied), and clarify that ''in use'' does not include routine cleaning operations. See Docket ID No. EPA–HQ–OAR–2008–0334. Petitioners explain that the exclusion for cleaning is needed because the definition of a ''chemical manufacturing process'' includes routine cleaning operations, but vessels must be opened for cleaning. Therefore, the Petitioners state that we should either propose changes that would require the use of covers or lids only when subject process vessels are in use, or seek comments on the requirement as written in the final rule.

We are granting reconsideration of the requirement to use a cover or lid on process vessels because the Petitioners comments indicate that the requirement can be interpreted as requiring control more stringent than we intended. The proposed rule specified that ''all process equipment in which organic HAP is used to process material must be covered when in use, and closure mechanisms on other openings and access points in process equipment must be in the closed position during operation, except when operator access is necessary.'' 73 FR 58377 (proposed 40 CFR 63.11495(a)). The intent of the requirement for covers in the proposed rule was to ensure that processes do not operate with open-top vessels. The purpose of the cover is to minimize

emissions from surface evaporation, but not necessarily to have a tight seal between the cover and the vessel. For the final rule, we tried to clarify what ''in use'' and ''operator access'' meant by specifying that the cover (or lid) ''must be in place at all times when the vessel contains HAP, except for material addition and sampling.'' However, as the Petitioners have pointed out, the revised language can be interpreted as prohibiting removal of the cover, even when only traces of HAP remain in the vessel after it has been drained, which would prohibit opening to perform maintenance or manual cleaning. Requiring use of the cover in this way is not GACT, and it was not our intent.

To address the Petitioners' issues, we are proposing to revise 40 CFR 63.11495(a)(1) in the final rule to read as follows: ''Each process vessel must be equipped with a cover or lid that must be closed whenever the vessel is in organic HAP service or metal HAP service, except for manual operations that require access, such as material addition and removal, inspection, sampling, and cleaning.'' We note that allowing opening of a process vessel for material removal clarifies that process vessels, such as filter presses, may be opened in order to remove the filter cake.

The proposed change also would exempt manual cleaning operations from the requirement to maintain closed covers and lids while a process vessel is in organic HAP or metal HAP service. As the Petitioners noted, the definition of ''chemical manufacturing process'' is drawn from the definition of a ''miscellaneous organic chemical manufacturing process'' in 40 CFR 63.2550 of the MON. That definition includes ''routine cleaning operations,'' which are described in the preamble to the final MON as ''cleaning conducted within enclosed equipment between batches or between campaigns.'' The MON preamble goes on to state that these operations ''often consist of conducting solvent rinses through the equipment,'' and emissions are characterized as part of the emissions from a batch process vent. See 68 FR 63860, November 10, 2003. Contrary to Petitioner's assertion, this type of cleaning was included as part of the process specifically because we considered the vessels to be ''in use'' while it is conducted. We also consider vessels to be in use when manual cleaning is performed. To clarify this point, we are proposing to revise the definition of ''chemical manufacturing process'' to specify that all cleaning activities are part of the process. However, because GACT does not include the use of closed covers and lids when performing manual cleaning, we are proposing two additional changes. First, we are proposing the change noted above to exempt manual cleaning operations from the requirement to maintain covers and lids in the closed position when the vessel is in organic HAP service or metal HAP service. Second, we are proposing to revise the definition of ''in organic HAP service'' to specify that a process vessel is no longer in organic HAP service after the vessel has been emptied to the extent practicable (*i.e.,* a vessel with liquid left on process vessel walls or as bottom clingage, but not in pools, due to floor irregularity, is considered completely empty), and any cleaning has been completed. We expect emissions to be minimal during manual cleaning operations and when a process vessel is no longer in organic HAP service. We are not proposing any changes to 40 CFR 63.11494(a)(1) regarding maintenance activities because those activities would be conducted after the vessel has been drained (and possibly cleaned) and the vessel would no longer be in organic HAP service.

We request comments on both the provisions, as specified in the final rule and the proposed changes. Specifically, we request comment on whether the proposed changes effectively address the issues raised by Petitioners, and clarify the requirements without introducing unintended consequences. We also request comment on whether a change like that proposed for the definition of ''in organic HAP service'' is needed for the definition of ''in metal HAP service.'' In particular, we request comment on whether a change is needed to address when vessels that contain metal HAP in the form of particulate are in use, and, if so, we request information on the types of vessels for which the change is needed and recommendations on how the language in the definition could be structured. We are also requesting comment on possible changes to the requirements for cleaning that would include requirements for manual cleaning as well as for automated rinses through closed equipment.

E. Requirement To Conduct Leak Inspections When Equipment Is in HAP Service

Petitioners state that ''the final rule can be read to imply that the equipment must be in HAP service when the inspection is conducted.'' Petitioners note that this is in contrast to the proposed rule, which would have required quarterly inspections without specifying any other conditions. Petitioners stated that they did not comment on the proposed language because they considered it to be reasonable; however, Petitioners contend that the apparent requirement in the final rule is problematic because batch processors who operate equipment in HAP service for short periods of time and have limited operating personnel may find it difficult to accomplish the required inspections during these narrow windows of time. Petitioners ask for clarification about whether this interpretation is correct, and, if it is, Petitioners state that we should either propose reverting to the proposed language, or propose language allowing quarterly leak detection and repair inspections when the equipment is in volatile organic compound (VOC) service, not just HAP service.

Based on our review of this issue, we are proposing some editorial changes to 40 CFR 63.11495(a)(3) of the final rule to make the rule easier to read and understand. These changes are described in Section VII of this preamble. However, we decided not to propose changes as suggested by the Petitioners because we have several concerns regarding how inspections can be conducted effectively when the process is not operating in HAP service. We request comment on both the specific concerns described below, as well as all other aspects of the requirements in the final rule related to the timing of inspections. First, because the configuration of process vessels and equipment likely changes from one CMPU to the next, we request comment on how sources would track which vessels and equipment to inspect in VOC service if we adopted Petitioners' approach and whether this effort would negate any advantages of having flexibility to inspect at times other than when the subject CMPU is operating in organic HAP service. Second, process vessels are generally opened and cleaned when reconfiguring to create a different CMPU, and equipment connections are also often opened. Therefore, we also request comment discussing how inspections in VOC service for a different configuration would provide information that is relevant to determining whether there are leaks from the subject CMPU. Finally, if someone elects to conduct Method 21 monitoring rather than sensory inspections, the instrument reading obtained would be related to the concentration of organic compound in the fluid and the response factor of the instrument for that organic compound. Thus, we request comment on the need to specify criteria for the type of fluid

that may be used when conducting inspections of vessels and equipment in VOC service (*e.g.,* that the VOC concentration must be no less than the total organic compound concentration in the subject CMPU when in organic HAP service). We will consider adopting the Petitioners' approach after reconsideration if we can adequately address these issues.

F. Applicability of the Family of Materials Concept

After proposal, the rule was revised in response to comments from Petitioners and others that argued applicability should be established on a CMPU basis instead of facility-wide basis. Petitioners specifically suggested that the EPA adopt the CMPU construct. We defined the CMPU in the final rule to include ''all process vessels, equipment, and activities necessary to operate a chemical manufacturing process that produces a material or family of materials * * *. A CMPU consists of one or more unit operations and any associated recovery device.'' 40 CFR 63.11494(b). In adopting the CMPU construct, we determined that, to adequately characterize the CMPU, the applicability of the rule should extend to the ''family of materials'' because the CMPU concept is derived from the MON, and production of a family of materials is part of a single process unit in the MON. Furthermore, as in the MON, the CMAS rule specifies mass emission thresholds above which more stringent control of batch process vents is required. Petitioners state that it can be difficult under the CMAS rule to determine what constitutes a family of materials. Petitioners believe that the term ''family of materials'' effectively expands the scope of a CMPU to include equipment that is not part of a process that uses or produces Table 1 HAP. Petitioners contend that there is no policy justification for applying the CMAS rule this broadly. Therefore, Petitioners request that the EPA interpret the ''family of materials'' term in such a way as to avoid regulating equipment that is not used to process a Table 1 HAP. Alternatively, Petitioners suggest that the EPA propose eliminating the phrase ''or a family of materials'' from the rule.

The definition of ''family of materials'' in the MON, and referenced in 40 CFR 63.11502 of the CMAS final rule, is as follows:

Family of materials means a grouping of materials with the same basic composition or the same basic end use or functionality produced using the same basic feedstocks with essentially identical HAP emission profiles (primary constituent and relative magnitude on a pound per pound basis) and manufacturing equipment configuration. Examples of families of materials include multiple grades of the same product or different variations of a product (*e.g.,* blue, black and red resins).

As in the MON, the intent of the family of materials concept in 40 CFR part 63, subpart VVVVVV is to ensure that sources will not be able to improperly avoid installation of add-on controls for batch process vent emissions by creating separate CMPU for production of essentially the same products (*i.e.,* products produced from the same basic raw materials, with essentially identical HAP emissions, and using the same configuration of manufacturing equipment). For example, a series of polymer products that differ only in molecular weight or the type of non-HAP additive are considered a family of materials when the same primary raw materials are used, the same types of HAP are emitted and the same configuration of production equipment is used. However, because the definition of family of materials in the final rule uses the term ''essentially'' identical HAP emission profiles, a family of materials potentially could include some products whose production does not involve Table 1 HAP. Therefore, to clarify the requirements, we are proposing to revise the definition of family of materials to state that only those products whose production involves emission of the same Table 1 HAP are to be considered part of a family of materials.

We also want to clarify the family of materials concept as it relates to production of isolated intermediates. A chemical manufacturing process is defined, in part, as ''all equipment which collectively functions to produce a product or isolated intermediate.'' An isolated intermediate is defined, in part, as ''a product of a process that is stored before subsequent processing.'' (As discussed in section VII of this preamble, we are proposing to add a definition of ''isolated intermediate'' that is consistent with the definition in the MON.) Even if an isolated intermediate and final product are produced using the same manufacturing equipment configuration and have the same Table 1 HAP emissions, they generally cannot be part of a family of materials because the definition specifies production of all products in the family must involve the same basic feedstocks. This condition would not be met if an isolated intermediate is used as a feedstock in later production of a final product. Furthermore, the definition of family of materials specified that all products in the family must have the same basic composition, end use, or functionality. This condition also would not be met in a situation where the isolated intermediate is transformed in the process to produce the final product.

We are requesting comment on all aspects of the family of materials concept, including the proposed change. We are particularly interested in descriptions of situations where someone thinks it would apply, but should not, and we request suggestions for additional changes that would make it easier to understand, apply and enforce. We are not, however, accepting comments on the use of the CMPU as the basis for determining applicability of the CMAS final rule.

V. Requirements During Periods of Startup, Shutdown and Malfunction (SSM)

During the comment period of the proposed rule, the United States Court of Appeals for the District of Columbia Circuit vacated two provisions in the EPA's CAA section 112 regulations governing the emissions of HAP during periods of startup, shutdown and malfunction (SSM). *Sierra Club* v. *EPA,* 551 F.3d 1019 (D.C. Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the ''General Provisions Rule,'' that the EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, the exemption in these two provisions exempts sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM.

The proposed CMAS rule contained references to the vacated provisions. Because the provisions were vacated, we removed the references in the final rule, and, in their place, we included alternative standards for startup and shutdown periods for continuous process vents. Table 3 to 40 CFR part 63, subpart VVVVVV. For batch process vents, we determined that startup and shutdown periods were already accounted for in the existing standard, and we determined that the remaining equipment did not have periods of startup and shutdown. 74 FR 56013. We declined to establish a different standard for malfunctions, as suggested by commenters. 74 FR 56033.

Further, as explained in the preamble to the final rule (74 FR 56033), periods of startup, normal operations and shutdown are all predictable and

routine aspects of a source's operations. However, by contrast, malfunction is defined as a ''sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *'' (40 CFR 63.2). Nothing in CAA section 112(d) or in case law requires that the EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. See *Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (D.C. Cir. 1978) (''In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.''). Further, it is reasonable to interpret CAA section 112(d) as not requiring the EPA to account for malfunctions in setting emissions standards.

We believe it would be impracticable to take malfunctions into account in setting CAA section 112(d) standards for chemical manufacturing area sources. As noted above, by definition, malfunctions are sudden and unexpected events, and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in the categories. Moreover, malfunctions can vary in frequency, degree and duration, further complicating standard setting. See, *e.g.*, *Sierra Club* v. *EPA,* 167 F.3d 658, 662 (D.C. Cir. 1999) (the EPA typically has wide latitude in determining the extent of data-gathering necessary to solve a problem. We generally defer to an agency's decision to proceed on the basis of imperfect scientific information, rather than to ''invest the resources to conduct the perfect study.'').

In the event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, the EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, ''sudden, infrequent, not reasonably preventable'' and was not instead ''caused in part by poor maintenance or careless operation.'' 40 CFR 63.2 (definition of malfunction).

Finally, the EPA recognizes that even equipment that is properly designed and maintained can sometimes fail, and that such failure can sometimes cause an exceedance of the relevant emission standard or other violation. (See, *e.g.*, *State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown* (Sept. 20, 1999); *Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions* (Feb. 15, 1983)). The EPA is, therefore, proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emission limits or other violations of applicable standards that are caused by malfunctions. See 40 CFR 63.11502 (defining ''affirmative defense'' to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding). We also are proposing regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 63.11501(e). See 40 CFR 22.24. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 63.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). For example, to successfully assert the affirmative defense, the source must prove by a preponderance of the evidence that excess emissions ''[w]ere caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner * * *.'' The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with CAA section 63.11501(e), and to prevent future malfunctions. For example, the source must prove by a preponderance of the evidence that ''[r]epairs were made as expeditiously as possible when the applicable emission limitations were being exceeded * * *'' and that ''[a]ll possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health * * *.'' In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense, and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the CAA (see also 40 CFR 22.77).

The EPA included an affirmative defense in the final rule in an attempt to balance a tension, inherent in many types of air regulation, to ensure adequate compliance while simultaneously recognizing that despite the most diligent of efforts, emission limits may be exceeded under circumstances beyond the control of the source. The EPA must establish emission standards that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' 42 U.S.C. 7602(k) (defining ''emission limitation and emission standard''). See, *e.g.*, *Sierra Club* v. *EPA,* 551 F.3d 1019, 1021 (DC Cir. 2008). Thus, the EPA is required to ensure that section 112 emissions limitations are continuous. The affirmative defense for malfunction events meets this requirement by ensuring that even where there is a malfunction, the emission limitation is still enforceable through injunctive relief. While ''continuous'' limitations, on the one hand, are required, there is also case law indicating that, in many situations, it is appropriate for the EPA to account for the practical realities of technology. For example, in *Essex Chemical* v. *Ruckelshaus,* 486 F.2d 427, 433 (DC Cir. 1973), the District of Columbia Circuit Court acknowledged that, in setting standards under CAA section 111 ''variant provisions'' such as provisions allowing for upsets during startup, shutdown and equipment malfunction ''appear necessary to preserve the reasonableness of the standards as a whole and that the record does not support the 'never to be exceeded' standard currently in force.'' See also, *Portland Cement Association* v. *Ruckelshaus,* 486 F.2d 375 (DC Cir. 1973). Though intervening case law such as *Sierra Club* v. *EPA* and the CAA 1977 amendments undermine the relevance of these cases today, they support the EPA's view that a system that incorporates some level of flexibility is reasonable. The affirmative defense simply provides for a defense to civil penalties for excess emissions that are proven to be beyond the control of the source. By incorporating an

affirmative defense, the EPA has formalized its approach to upset events. In a Clean Water Act setting, the Ninth Circuit required this type of formalized approach when regulating ''upsets beyond the control of the permit holder.'' *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253, 1272–73 (9th Cir. 1977). But see, *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1057–58 (DC Cir. 1978) (holding that an informal approach is adequate). The affirmative defense provisions give the EPA the flexibility to both ensure that its emission limitations are ''continuous'' as required by 42 U.S.C. 7602(k), and account for unplanned upsets and thus support the reasonableness of the standard as a whole.

The EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of the SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked. We are also seeking comment on the inclusion of the affirmative defense provisions. Finally, we solicit comment on provisions in the final rule applicable to startup and shutdown periods for continuous and batch process vents.

In addition to the affirmative defense provisions described above, we are also proposing several changes throughout the rule and in Table 9 (the table that specifies applicability of General Provisions to subpart VVVVVV of 40 CFR part 63) to specify applicable requirements during periods of startup and shutdown and periods of malfunction. For example, we are proposing to add new paragraphs in 40 CFR 63.11501(c)(1)(vii) and (viii) that would require records of the occurrence and duration of malfunctions, as well as records of actions taken to minimize emissions during these periods and to fix malfunctioning equipment. We are also proposing to add a paragraph in 40 CFR 63.11501(d)(8) that would require reporting of information related to each malfunction. Table 9 in the final rule states that 63.6(e)(1)(i) does not apply to subpart VVVVVV. We are also proposing to add a new paragraph in 40 CFR 63.11495(d) that specifies the general duty to minimize emissions applies at all times. In addition to the proposed changes in the text of the rule, entries for 40 CFR 63.6(e)(1)(i), 63.10(b)(2) and 63.10(d)(5) also would be changed to reference the new paragraphs in 40 CFR 63.11495(d), 63.11501(c) and 63.11501(d). Finally, we are proposing to revise Table 9 to state that the performance testing requirements in 40 CFR 63.7(e)(1) do not apply. The comments to Table 9 for that provision identify the location of the applicable performance testing requirements for CMAS sources.

VI. Requirements for Metal HAP Process Vents

A. Definition of Metal HAP Process Vent

A metal HAP process vent is defined in the final rule as ''the point of discharge to the atmosphere (or inlet to a control device, if any) of a metal HAP-containing gas stream from any CMPU at an affected source.'' We are requesting comment on the applicability of this definition to all types of equipment from which metal HAP are emitted. We are particularly interested in comments on how well it applies to chemical manufacturing processes in comparison to the definitions for batch and continuous process vents, which have been used in HON, MON and several other MACT standards for chemical manufacturing.

B. Metal HAP Process Vent Standards

Since promulgation, we determined that the final rule does not clearly explain how the rule applies when the Table 1 metal HAP are emitted as a gaseous organo-metallic compound along with other organic compounds that are routed to an incinerator for control. To clarify our intent, the following discussion summarizes the requirements in the final rule for all types of metal HAP compounds, including organo-metallic compounds. It also identifies potential limitations in these requirements and requests information to enable better characterization of affected CMPU.

Table 4 to 40 CFR part 63, subpart VVVVVV specifies that an owner or operator of an affected CMPU with metal HAP emissions equal to or greater than 400 pounds per year (lb/yr) must reduce the metal HAP emissions by at least 95 percent. The emission limit specified in Table 4 to subpart VVVVVV does not differentiate between compounds that are emitted as particulate and compounds that are emitted as vapor or as liquid droplets, or between organic and inorganic compounds. All Table 1 metal HAP compounds in all phases are subject. Thus, in the case of a CMPU that uses an organo-metallic Table 1 metal HAP compound, both the 400 lb/yr threshold and 95-percent emission limit apply. Although combustion would change the type of Table 1 metal HAP compound(s) emitted, it would not destroy the metal itself and likely would not reduce the mass by 95 percent. Thus, if the uncontrolled metal HAP emissions are greater than 400 lb/yr, additional control of the metal HAP would be required either upstream or downstream of the incinerator.

To demonstrate initial compliance, the owner or operator must conduct either a performance test or an engineering assessment (except new sources using a baghouse as a control device are required to conduct a performance test). If the owner or operator elects to conduct a performance test for a CMPU from which the metal HAP are emitted as a vapor, then the test must be conducted using Method 29 because the other specified alternative, Method 5, is not applicable. To demonstrate ongoing compliance, the owner or operator must develop and operate in accordance with a site-specific monitoring plan. This requirement applies for any type of control device used to control metal HAP emissions.

Although the metal HAP requirements apply to all Table 1 metal HAP as described above, the 400 lb/yr threshold was developed, primarily, based on information from CMPU where the metal HAP is emitted as particulate. In general, these facilities processed ores and/or manufactured solid materials such as pigments, catalysts or manganese dioxide. Some metal HAP at certain steps in some processes are liquids or dissolved in solvents, but these metal HAP compounds typically have very low vapor pressures and emissions; the bulk of the metal HAP emissions are particulates from operations such as grinding, mixing, calcining, drying and packaging. In addition, the control cost impacts were developed assuming the metal HAP are emitted in the form of particulate (See Docket ID No. EPA–HQ–OAR–2008–0334–0005). Therefore, we are requesting comment on whether there are reasons GACT for processes that emit gaseous Table 1 metal HAP should be different from GACT, as specified in the final rule. We are particularly interested in information on the types of processes that emit gaseous Table 1 metal HAP, the range in uncontrolled emissions from such processes, the types of emission points (*i.e.,* are these emission points consistent with the definition of ''metal HAP process vent''), the types of control devices used to control such emissions and whether those processes also emit particulate metal HAP.

VII. Technical Corrections and Clarifications

We are proposing several technical corrections. These amendments are

being proposed to correct inaccuracies and oversights that were promulgated in the final rule. These proposed changes are described in Table 1 of this preamble. We request comment on all of these proposed changes.

TABLE 1—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART VVVVVV

Section of subpart VVVVVV	Description of correction
40 CFR 63.11494(a)(3)	We are proposing several changes to this paragraph. First, we are proposing to clarify that the 0.1-percent and 1.0-percent concentration thresholds are on a mass basis of the compound containing the Table 1 HAP. Second, we are proposing to clarify that all Table 1 HAP, except for quinoline and manganese compounds, are considered carcinogenic, probably carcinogenic or possibly carcinogenic. Therefore, the concentration threshold of 1.0 weight percent applies only to quinoline and manganese compounds, and the threshold of 0.1 weight percent applies to all other Table 1 HAP. Third, because it is not clear under the final rule whether an emission stream that contains a Table 1 HAP as a gaseous byproduct is a "process fluid," we are proposing changes to clarify applicability of CMPU that generate a Table 1 HAP byproduct. If Table 1 HAP are generated as byproduct, the proposed changes clarify that the CMPU is subject to the rule if the concentration of the Table 1 HAP in any liquid stream in the CMPU exceeds the same thresholds that apply to feedstocks. Specifically, if quinoline is generated as a byproduct, then the CMPU is subject if the quinoline concentration in any liquid stream in the CMPU exceeds 1.0 percent by weight. Similarly, if hydrazine or any other organic Table 1 HAP is generated as a byproduct, then the process is subject if the collective concentration of these compounds in any liquid stream is greater than 0.1 percent by weight. In addition, the proposed changes also specify that a CMPU is subject if the collective concentration of these Table 1 HAP exceeds 50 parts per million by volume in any process vent stream. This threshold was specified because this concentration defines a process vent, and such emissions streams are subject to control. Finally, we are proposing to consolidate paragraphs (a)(1) and (3) to eliminate redundancy.
40 CFR 63.11494(c)(1)(vii)	We are proposing to add a new paragraph that would list lead oxide production at lead acid battery manufacturing facilities in those operations for which this subpart does not apply. These sources are covered by 40 CFR part 63, subpart PPPPPP—NESHAP for Lead Acid Battery Manufacturing Area Sources.
40 CFR 63.11494(d)	We are proposing to clarify that a CMPU using only Table 1 metal HAP is not subject to any requirements for wastewater systems or heat exchange systems. Only organic HAP are subject to wastewater and heat exchange system requirements. We are proposing this change based on the fact that most metal HAP compounds have a very low vapor pressure and would not volatilize from wastewater or cooling water. However, given our discussion of organo-metallic compounds in section VI.B of this preamble, we are also requesting comment on whether this change should be limited to only certain types or classes of metal HAP compounds for wastewater systems, heat exchange systems or both types of systems.
40 CFR 63.11495(a)(3)	To clarify and improve the readability of this section, we are proposing to split it into an introductory section with five subsections. One sentence that contains two concepts also would be split into two separate sentences. The requirements, however, have not changed.
40 CFR 63.11496(f)(3)(i)(C)	We are proposing to edit this paragraph to add the acronym "CMS."
40 CFR 63.11496(f)(3)(ii)	We are proposing to edit the first sentence in this paragraph to remove the unnecessary word "report."
40 CFR 63.11496(f)(3)(ii)	To demonstrate initial compliance with the emissions limit for HAP metals, 40 CFR 63.11496(f)(3)(ii) in the final rule requires either a performance test or engineering assessment. This paragraph in the final rule also specifies that a performance test must be conducted under representative process operating conditions, but it does not specify conditions under which an engineering assessment must be conducted. To correct this oversight, and maintain consistency with the conditions under which performance testing must be conducted, we are proposing to modify 40 CFR 63.11496(f)(3)(ii) to clarify that if a source elects to conduct an engineering assessment to demonstrate initial compliance with the standards for metal HAP process vents, then the design evaluation must be conducted at representative operating conditions for the CMPU.
40 CFR 63.11498(a)(2), 63.11502(b), and Table 6.	Other rules, such as the HON, specify that discharge of wastewater to a Resource Conservation and Recovery Act (RCRA)-permitted underground injection well is a treatment (i.e., control) option for wastewater streams. We intended to include the same option in 40 CFR part 63, subpart VVVVVV. However, "wastewater treatment" is defined in 40 CFR 63.11502 as procedures that remove or reduce HAP, which does not clearly include discharge to an underground injection well. To clarify this point, we are proposing to add a definition of "hazardous waste treatment" in 40 CFR 63.11502(b) to mean treatment in a RCRA-permitted incinerator, process heater, boiler or underground injection well. The specific language in the proposed definition is consistent with 40 CFR 63.138(h) of the HON wastewater provisions. We are also proposing corresponding changes to Table 6 to subpart VVVVVV. Specifically, for each wastewater stream, Item 1.a would require either wastewater treatment or hazardous waste treatment. In addition, Item 2.b would be edited to use the new term "hazardous waste treatment." The proposed changes to Item 1.a also make it clear that the treatment conducted to meet Item 2.b would satisfy the requirements of Item 1.a.
40 CFR 63.11501(c)(4)(i)	We are proposing to replace the incorrect word "dimension" with the correct word "dimensions."
40 CFR 63.11502(a)	We are proposing to insert a reference to the definition of the term "isolated intermediate" in 40 CFR 63.2550 of the MON because this term is used in the definitions of several other terms in 40 CFR 63.11502.

TABLE 1—MISCELLANEOUS TECHNICAL CORRECTIONS TO 40 CFR PART 63, SUBPART VVVVVV—Continued

Section of subpart VVVVVV	Description of correction
40 CFR 63.11502(b)	We are proposing to modify the definition of ''product'' to remove ''isolated intermediates'' from the list of materials that are not considered products. This change would make the definition of product consistent with the definitions of chemical manufacturing process and isolated intermediate. A chemical manufacturing process is defined as all equipment which collectively functions to produce a product or isolated intermediate. Isolated intermediate is defined as a product of a process that is stored before subsequent processing.
40 CFR 63.11502(b)	We are proposing to add a definition for the term ''uncontrolled emissions'' because the control threshold for batch process vents and metal HAP process vents in 40 CFR 63.11496(a) and (f) use this term. The proposed definition would read as follows: ''Uncontrolled emissions means process vent emissions at the outlet of the last recovery device, if any, and prior to any control device. In the absence of both recovery devices and control devices, uncontrolled emissions are the emissions discharged to the atmosphere.''

VIII. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Information Collection Request (ICR) document prepared by the EPA has been assigned EPA ICR number 2323.03. The information collection requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to agency policies set forth in 40 CFR part 2, subpart B.

For this proposed rule, the EPA is adding affirmative defense to the estimate of burden in the ICR. To provide the public with an estimate of the relative magnitude of the burden associated with an assertion of the affirmative defense position adopted by a source, the EPA has provided administrative adjustments to this ICR to show what the notification, recordkeeping and reporting requirements associated with the assertion of the affirmative defense might entail. The EPA's estimate for the required notification, reports and records for any individual incident, including the root cause analysis, totals $2,958 and is based on the time and effort required of a source to review relevant data, interview plant employees, and document the events surrounding a malfunction that has caused an exceedance of an emissions limit. The estimate also includes time to produce and retain the record and reports for submission to the EPA. The EPA provides this illustrative estimate of this burden because these costs are only incurred if there has been a violation and a source chooses to take advantage of the affirmative defense.

Given the variety of circumstances under which malfunctions could occur, as well as differences among sources' operation and maintenance practices, we cannot reliably predict the severity and frequency of malfunction-related excess emissions events for a particular source. It is important to note that the EPA has no basis currently for estimating the number of malfunctions that would qualify for an affirmative defense. Current historical records would be an inappropriate basis, as source owners or operators previously operated their facilities in recognition that they were exempt from the requirement to comply with emissions standards during malfunctions. Of the number of excess emissions events reported by source operators, only a small number would be expected to result from a malfunction (based on the definition above), and only a subset of excess emissions caused by malfunctions would result in the source choosing to assert the affirmative defense. Thus, we believe the number of instances in which source operators might be expected to avail themselves of the affirmative defense will be extremely small. For this reason, we estimate no more than 2 or 3 such occurrences for all sources subject to 40 CFR part 63, subpart VVVVVV over the 3-year period covered by this ICR. We expect to gather information on such events in the future and will revise this estimate as better information becomes available. The annual monitoring, reporting and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) for these amendments to subpart VVVVVV is estimated to be $3,141 per year. This includes 30 labor hours per year at a total labor cost of $3,141 per year. There is no change in annual burden to the Federal government for these amendments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When these ICR are approved by OMB, the agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

To comment on the agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, the EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2008–0334. Submit any comments related to the ICR to the EPA and OMB. See the **ADDRESSES**

section at the beginning of this notice for where to submit comments to the EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for the EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after March 30, 2012, a comment to OMB is best assured of having its full effect if OMB receives it by February 29, 2012. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201(less than 500, 750 or 1,000 employees, depending on the specific NAICS Code under subcategory 325); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on any small entities because it does not impose any additional regulatory requirements beyond those already promulgated in the final rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

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

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule proposes amendments to aid with compliance, but does not change the level of the standards in the rule.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule will not impose direct compliance costs on state or local governments, and will not preempt state law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

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

This proposed rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

The EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, this action does not change the level of standards already in place.

I. National Technology Transfer and Advancement Act

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

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

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

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

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected

populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The amendments do not relax the control measures on sources regulated by the rules, and, therefore, will not cause emissions increases from these sources.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances.

Dated: January 13, 2012.

Lisa P. Jackson,

Administrator.

For the reasons cited in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

Subpart VVVVVV—[AMENDED]

2. Section 63.11494 is amended by:

a. Revising paragraph (a);

b. Adding paragraph (c)(1)(vii);

c. Revising the last sentence in paragraph (d); and

d. Revising paragraph (e) to read as follows:

§ 63.11494 What are the applicability requirements and compliance dates?

(a) Except as specified in paragraph (c) of this section, you are subject to this subpart if you own or operate a chemical manufacturing process unit (CMPU) that meets the conditions specified in paragraphs (a)(1) and (2) of this section.

(1) The CMPU is located at an area source of hazardous air pollutant (HAP) emissions.

(2) HAP listed in Table 1 to this subpart (Table 1 HAP) are present in the CMPU, as specified in paragraph (a)(2)(i), (ii), (iii), (iv) or (v) of this section.

(i) The CMPU uses as feedstock, any material that contains quinoline and/or manganese compounds at a concentration greater than 1.0 percent by weight, or other Table 1 HAP at a collective concentration greater than 0.1 percent by weight. To determine the Table 1 HAP content of feedstocks, you may rely on formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet (MSDS) for the material. If the concentration in an MSDS is presented as a range, use the upper bound of the range.

(ii) Quinoline is generated as byproduct and is present in the CMPU in any liquid stream (process or waste) at a concentration greater than 1.0 percent by weight.

(iii) Hydrazine and/or Table 1 organic compounds other than quinoline are generated as byproduct and are present in the CMPU in any liquid stream (process or waste) at a collective concentration greater than 0.1 percent by weight.

(iv) Hydrazine and/or any Table 1 organic compounds are generated as byproduct and are present in the CMPU in any process vent stream at a collective concentration greater than 50 parts per million by volume (ppmv).

(v) Hydrazine or any Table 1 organic compound is produced as a product of the CMPU.

* * * * *

(c) * * *

(1) * * *

(vii) Lead oxide production at Lead Acid Battery Manufacturing Facilities, subject to subpart PPPPPP of this part.

* * * * *

(d) * * * A CMPU using only Table 1 metal HAP is required to control only total CAA section 112(b) metal HAP in accordance with § 63.11495 and, if applicable, § 63.11496(f).

* * * * *

(e) Any source subject to this subpart that installed a federally-enforceable control device on an affected CMPU by the first substantive compliance date of an otherwise applicable MACT standard, and, as a result, became an area source under 40 CFR part 63, is required to obtain a permit under 40 CFR part 70 or 40 CFR part 71. For existing sources subject to title V, as a result of this rule, a complete title V permit application must be submitted no later than 12 months after date of publication of the final rule amendments in the **Federal Register** if the source is subject to this rule on that date. New sources and existing sources that become subject to this rule after date of publication of the final rule amendments in the **Federal Register** must submit a complete title V permit application no later than 12 months after becoming subject to this rule. Otherwise, you are exempt from the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required by law to obtain a permit under 40 CFR 70.3(a) or 40 CFR 71.3(a). Notwithstanding the previous sentence, you must continue to comply with the provisions of this subpart.

* * * * *

3. Section 63.11495 is amended by:

a. Revising paragraphs (a)(1) and (a)(3);

b. Adding paragraph (c) heading; and

c. Adding paragraph (d) to read as follows:

§ 63.11495 What are the management practices and other requirements?

(a) * * *

(1) Each process vessel must be equipped with a cover or lid that must be closed at all times when it is in organic HAP service or metal HAP service, except for manual operations that require access, such as material addition and removal, inspection, sampling and cleaning.

* * * * *

(3) You must conduct inspections of process vessels and equipment for each CMPU in organic HAP service or metal HAP service, as specified in paragraphs (a)(3)(i) through (v) of this section, to demonstrate compliance with paragraph (a)(1) of this section and to determine that the process vessels and equipment are sound and free of leaks.

(i) Inspections must be conducted at least quarterly.

(ii) For these inspections, detection methods incorporating sight, sound or smell are acceptable. Indications of a leak identified using such methods constitute a leak unless you demonstrate that the indications of a leak are due to a condition other than loss of HAP. If indications of a leak are determined not to be HAP in one quarterly monitoring period, you must still perform the inspection and demonstration in the next quarterly monitoring period.

(iii) As an alternative to conducting inspections, as specified in paragraph (a)(3)(ii) of this section, you may use Method 21 of 40 CFR part 60, appendix A–7, with a leak definition of 500 ppmv to detect leaks. You may also use Method 21 with a leak definition of 500 ppmv to determine if indications of a leak identified during an inspection conducted in accordance with paragraph (a)(3)(ii) of this section are due to a condition other than loss of HAP. The procedures in this paragraph (a)(3)(iii) may not be used as an alternative to the inspection required by paragraph (a)(3)(ii) of this section for process vessels that contain metal HAP as particulate.

(iv) Inspections must be conducted while the subject CMPU is operating.

(v) No inspection is required in a calendar quarter during which the subject CMPU does not operate for the entire calendar quarter and is not in organic HAP service or metal HAP service. If the CMPU operates at all

during a calendar quarter, an inspection is required.

* * * * *

(c) *Startup, shutdown and malfunction.* * * *

(d) *General duty.* At all times, you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the Administrator, which may include, but is not limited to, monitoring results, review of operation and maintenance procedures, review of operation and maintenance records and inspection of the source.

4. Section 63.11496 is amended by revising paragraphs (f)(3)(i)(C), (f)(3)(ii) and (g)(1) to read as follows:

§ 63.11496 What are the standards and compliance requirements for process vents?

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) Operation and maintenance plan for the control device (including a preventative maintenance schedule consistent with the manufacturer's instructions for routine and long-term maintenance) and continuous monitoring system (CMS).

* * * * *

(ii) You must conduct a performance test or an engineering assessment for each CMPU subject to a HAP metals emissions limit in Table 4 to this subpart and report the results in your Notification of Compliance Status (NOCS). Each performance test or engineering assessment must be conducted under representative operating conditions, and sampling for each performance test must be conducted at both the inlet and outlet of the control device. Upon request, you shall make available to the Administrator such records as may be necessary to determine the conditions of performance tests. If you own or operate an existing affected source, you are not required to conduct a performance test if a prior performance test was conducted within the 5 years prior to the effective date using the same methods specified in paragraph (f)(3)(iii) of this section, and, either no process changes have been made since the test, or, if you can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

* * * * *

(g) * * *

(1) *Requirements for Performance Tests.* (i) The requirements specified in §§ 63.2450(g)(1) through (4) apply instead of, or in addition to, the requirements specified in 40 CFR part 63, subpart SS.

(ii) Upon request, you shall make available to the Administrator, such records as may be necessary to determine the conditions of performance tests.

* * * * *

5. Section 63.11498 is amended by revising paragraph (a)(2) to read as follows:

§ 63.11498 What are the standards and compliance requirements for wastewater systems?

(a) * * *

(2) You are not required to determine the partially soluble concentration in wastewater that is hard piped to a combustion unit or hazardous waste treatment unit, as specified in Table 6, Item 2.b to this subpart, or Table 6, Item 2.c to this subpart.

* * * * *

6. Section 63.11501 is amended by:

a. Revising the section heading;

b. Revising the second sentence in paragraph (c) introductory text, and paragraph (c)(1) introductory text;

c. Adding paragraphs (c)(1)(vii) and (c)(1)(viii);

d. Revising paragraph (c)(4)(i);

e. Adding paragraph (c)(8);

d. Revising the second sentence in paragraph (d) introductory text;

e. Adding paragraph (d)(8); and

f. Adding paragraph (e) to read as follows:

§ 63.11501 What are the notification, recordkeeping, and reporting requirements, and how may I assert an affirmative defense for exceedance of emission limit during malfunction?

* * * * *

(c) * * * If you are subject, you must comply with the recordkeeping and reporting requirements of § 63.10(b)(2)(iii) and (vi) through (xiv), and the applicable requirements specified in paragraphs (c)(1) through (8) of this section.

(1) For each CMPU subject to this subpart, you must keep the records specified in paragraphs (c)(1)(i) through (viii) of this section.

* * * * *

(vii) Records of the occurrence and duration of each malfunction of operation (*i.e.,* process equipment) or the air pollution control and monitoring equipment.

(viii) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.11495(d), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

* * * * *

(4) * * *

(i) Keep records of the vessel dimensions, capacity, and liquid stored, as specified in § 63.1065(a).

* * * * *

(8) For continuous process vents subject to Table 3 to this subpart, keep records of the occurrence and duration of each startup and shutdown of operation of process equipment, or of air pollution control and monitoring equipment.

(d) * * * Reports are required only for semiannual periods during which you experienced any of the events described in paragraphs (d)(1) through (8) of this section.

* * * * *

(8) *Malfunctions.* If a malfunction occurred during the reporting period, the report must include the number, duration and a brief description for each type of malfunction which occurred during the reporting period, and which caused or may have caused any applicable emission limitation to be exceeded. The report must include an estimate of the volume of regulated pollutants emitted and attributed to the malfunction, with a description of the method used to estimate the emissions. The report must also include a description of actions you took during a malfunction of an affected source to minimize emissions in accordance with § 63.11495(d), including actions taken to correct a malfunction.

(e) *Affirmative defense for exceedance of emission limit during malfunction.* In response to an action to enforce the standards set forth in §§ 63.11495 through 63.11499, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense is not available for claims for injunctive relief.

(1) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (e)(2) of this section, and must prove by a preponderance of evidence that: (i) The excess emissions:

(A) Were caused by a sudden, infrequent and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(B) Could not have been prevented through careful planning, proper design, or better operation and maintenance practices; and

(C) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(D) Were not part of a recurring pattern indicative of inadequate design, operation or maintenance; and

(ii) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(iii) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(iv) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury or severe property damage; and

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(vi) All emissions monitoring and control systems were kept in operation, if at all possible, consistent with safety and good air pollution control practices; and

(vii) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(viii) At all times, the affected source was operated in a manner consistent with good practices for minimizing emissions; and

(ix) A written root cause analysis has been prepared, the purpose of which is to determine, correct and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis must also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(2) *Notification.* If you experience an exceedance of your emission limit(s) during a malfunction, you must submit a written report to the Administrator within 45 business days of the initial occurrence of the exceedance of the standard(s) in §§ 63.11495 through 63.11499 to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (e)(1) of this section. You may seek an extension of this deadline for up to 30 additional business days by submitting a written request to the Administrator before the expiration of the 45 business-day period. Until a request for an extension has been approved by the Administrator, you are subject to the requirement to submit such report within 45 business days.

7. Section 63.11502 is amended by:

a. Adding in alphabetical order the term ''Isolated intermediate (§ 63.2550),'' and removing the term ''Family of materials (§ 63.2550)'' in paragraph (a); and

b. Adding in alphabetical order definitions for ''Affirmative defense,'' ''Family of materials,'' ''Hazardous waste treatment,'' and ''Uncontrolled emissions,'' revising paragraph (1) of the definition of ''Chemical manufacturing process,'' and revising the definitions for ''In organic HAP service'' and ''Product'' in paragraph (b) to read as follows:

§ 63.11502 What definitions apply to this subpart?

(a) * * *

Isolated intermediate (§ 63.2550)

* * * * *

(b) * * *

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

* * * * *

Chemical manufacturing process

* * *

(1) All cleaning operations;

* * * * *

Family of materials means a grouping of materials that have the same basic composition or the same basic end use or functionality; are produced using the same basic feedstocks, the same manufacturing equipment configuration and in the same sequence of steps; and whose production results in emissions of the same Table 1 HAP at approximately the same rate per pound of product produced. Examples of families of materials include multiple grades of same product or different variations of a product (*e.g.,* blue, black and red resins).

* * * * *

Hazardous waste treatment, as used in the wastewater requirements, means treatment in any of the following units:

(1) A hazardous waste incinerator for which the owner or operator has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 264, subpart O, or has certified compliance with the interim status requirements of 40 CFR part 265, subpart O;

(2) A process heater or boiler for which you either have been issued a final permit under 40 CFR part 270 and comply with the requirements of 40 CFR part 266, subpart H, or for which you have certified compliance with the interim status requirements of 40 CFR part 266, subpart H; or

(3) An underground injection well for which the owner or operator has been issued a final permit under 40 CFR part 270 or 40 CFR part 144 and complies with the requirements of 40 CFR part 122.

* * * * *

In organic HAP service means that a process vessel or piece of equipment either contains or contacts a feedstock, byproduct or product that contains an organic HAP, excluding any organic HAP used in manual cleaning activities. A process vessel is no longer in organic HAP service after the vessel has been emptied to the extent practicable (*i.e.,* a vessel with liquid left on process vessel walls or as bottom clingage, but not in pools, due to floor irregularity, is considered completely empty) and any cleaning has been completed.

* * * * *

Product means a compound or chemical which is manufactured as the intended product of the CMPU. Products include co-products. By-products, impurities, wastes and trace contaminants are not considered products.

* * * * *

Uncontrolled emissions means process vent emissions at the outlet of the last recovery device, if any, and prior to any control device. In the absence of both recovery devices and control devices, uncontrolled emissions are the emissions discharged to the atmosphere.

* * * * *

Table 6 to Subpart VVVVVV of Part 63—[Amended]

8. Table 6 to subpart VVVVVV of part 63 is revised to read as follows:

TABLE 6 TO SUBPART VVVVVV OF PART 63—EMISSION LIMITS AND COMPLIANCE REQUIREMENTS FOR WASTEWATER SYSTEMS

[As required in § 63.11498, you must comply with the requirements for wastewater systems as shown in the following table]

For each ...	You must ...	And you must ...
1. Wastewater Stream	a. Discharge to onsite or offsite wastewater treatment or hazardous waste treatment.	i. Maintain records identifying each wastewater stream and documenting the type of treatment that it receives. Multiple wastewater streams with similar characteristics and from the same type of activity in a CMPU may be grouped together for recordkeeping purposes.
2. Wastewater stream containing partially soluble HAP at a concentration ≥10,000 ppmw and separate organic and water phases.	a. Use a decanter, steam stripper, thin film evaporator, or distillation unit to separate the water phase from the organic phase(s); or	i. For the water phase, comply with the requirements in Item 1 of this table, and ii. For the organic phase(s), recycle to a process, use as fuel, or dispose as hazardous waste either onsite or offsite, and iii. Keep records of the wastewater streams subject to this requirement and the disposition of the organic phase(s).
	b. Hard pipe the entire wastewater stream to onsite hazardous waste treatment, or hard pipe the entire wastewater stream to a point of transfer to offsite hazardous waste treatment.	i. Keep records of the wastewater streams subject to this requirement and the disposition of the wastewater streams.

9. Table 9 to subpart VVVVVV of part 63 is amended by:

a. Revising the entry for 63.6(e)(1)(i) and (ii), (e)(3) and (f)(1);

b. Removing the entry for 63.7(a)(2), (b), (d), (e)(1)–(e)(3);

c. Adding a new entry for 63.7(a)(2), (b), (d), (e)(2)–(e)(3);

d. Adding a new entry for 63.7(e)(1);

e. Removing the entry for 63.8(a)(1), (a)(4), (b), (c)(1)–(c)(3), (f)(1)–(5);

f. Adding new entries for 63.8(a)(1), (a)(4), (b), (c)(1)(ii), (c)(2)–(c)(3), (f)(1)–(5), and 63.8(c)(1)(i) and 63.8(c)(1)(iii);

g. Removing the entry for 63.8(c)(6)–(c)(8), (d), (e), (f)(6);

h. Adding new entries for 63.8(c)(6)–(c)(8), (d)(1)–(d)(2), (e), (f)(6) and 63.8(d)(3);

i. Removing the entry for 63.10(b)(2)(i)–(b)(2)(v);

j. Adding new entries for 63.10(b)(2)(i), 63.10(b)(2)(ii), 63.10(b)(2)(iii), and 63.10(b)(2)(iv)–(v);

k. Removing the entry for 63.10(c)(7)–(c)(8), (c)(10)–(c)(12), (c)(15);

l. Adding new entries for 63.10(c)(7)–(8), 63.10(c)(10), 63.10(c)(11), 63.10(c)(12) and 63.10(c)(15); and

m. Revising the entry for 63.10(d)(5) to read as follows:

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV

Citation	Subject	Applies to Subpart VVVVVV	Explanation
*	*	*	*
*	*	*	*
63.6(e)(1)(i) and (ii), (e)(3), and (f)(1).	SSM Requirements	No	See § 63.11495(d) for general duty requirement.
*	*	*	*
63.7(a)(2), (b), (d), (e)(2)–(e)(3).	Performance Testing Schedule, Notification of Performance Test, Performance Testing Facilities, and Conduct of Performance Tests.	Yes/No	Requirements apply if conducting test for metal HAP control; requirements in §§ 63.997(c)(1), (d), (e) and § 63.999(a)(1) apply, as referenced in § 63.11496(g), if conducting test for organic HAP or hydrogen halide and halogen HAP control device.
63.7(e)(1)	Performance Testing	No	See § 63.11496(f)(3)(ii) if conducting a test for metal HAP emissions. See §§ 63.11496(g) and 63.997(e)(1) if conducting a test for continuous process vents or for hydrogen halide and halogen emissions. See §§ 63.11496(g) and 63.2460(c) if conducting a test for batch process vents.
63.8(a)(1), (a)(4), (b), (c)(1)(ii), (c)(2)–(c)(3), (f)(1)–(5).	Monitoring Requirements.	Yes	
63.8(c)(1)(i)	General Duty to Minimize Emissions and CMS Operation.	No	

TABLE 9 TO SUBPART VVVVVV OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART VVVVVV—Continued

Citation	Subject	Applies to Subpart VVVVVV	Explanation
63.8(c)(1)(iii)	Requirement to Develop SSM Plan for CMS.	No	
*	*	*	*
63.8(c)(6)–(c)(8), (d)(1)–(d)(2), (e), (f)(6).		Yes	Requirements apply only if you use a continuous emission monitoring system (CEMS) to demonstrate compliance with the alternative standard in § 63.11496(e).
63.8(d)(3)	Written Procedures for CMS.	Yes	Requirement applies except for last sentence, which refers to an SSM plan. SSM plans are not required.
*	*	*	*
63.10(b)(2)(i)	Recordkeeping of Occurrence and Duration of Startups and Shutdowns.	No	See § 63.11501(c)(8) for recordkeeping of occurrence and duration of each startup and shutdown for continuous process vents that are subpart to Table 3 to this subpart.
63.10(b)(2)(ii)	Recordkeeping of Malfunctions.	No	See § 63.11501(c)(1)(vii) and (viii) for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
63.10(b)(2)(iii)	Maintenance Records	Yes	
63.10(b)(2)(iv) and (v)	Actions Taken to Minimize Emissions During SSM.	No	
*	*	*	*
63.10(c)(7)–(8)	Additional Recordkeeping Requirements for CMS—Identifying Exceedances and Excess Emissions.	Yes	
63.10(c)(10)	Recordkeeping Nature and Cause of Malfunctions.	No	See § 63.11501(c)(1)(vii) and (viii) for malfunctions recordkeeping requirements.
63.10(c)(11)	Recording Corrective Actions.	No	See § 63.11501(c)(1)(vii) and (viii) for malfunctions recordkeeping requirements.
63.10(c)(12)		Yes	
63.10(c)(15)	Use of SSM Plan	No	
*	*	*	*
63.10(d)(5)	SSM Reports	No	See § 63.11501(d)(8) for reporting requirements for malfunctions.
*	*	*	*

[FR Doc. 2012–1610 Filed 1–27–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 19

Monday, January 30, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a briefing meeting to be followed by a planning meeting of the Kentucky Advisory Committee (Committee) to the Commission will be held on Wednesday, February 22, 2012, at Gardiner Hall, Room 310, University of Louisville, Louisville, Kentucky 40292. The briefing meeting is scheduled to begin at 1 p.m. and adjourn at approximately 2 p.m.; the purpose of the briefing meeting is for Committee members to receive information about changes to executive clemency policy for ex-felons. The planning meeting is scheduled to begin at 2 p.m. and adjourn at approximately 3 p.m.; the purpose of the planning meeting is for the Committee to plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office of the Commission by March 21, 2012. The address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000, (or for hearing impaired TDD (800) 877–8339), or by email *klee@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Southern Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, January 25, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–1894 Filed 1–27–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a planning meeting of the South Carolina Advisory Committee (Committee) to the Commission will be held on Friday, February 24, 2012, at the South Carolina School of Law, 701 South Main Street, Columbia, South Carolina 29208. The meeting is scheduled to begin at 10 a.m. and adjourn at approximately noon. The purpose of the meeting is for Committee members to consider a report on school discipline.

Members of the public are entitled to submit written comments. The comments must be received in the Southern Regional Office of the Commission by March 23, 2012. The address is Southern Regional Office, U.S. Commission on Civil Rights, 61 Forsyth Street, Suite 16T126, Atlanta, GA 30303. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Peter Minarik, Regional Director, Southern Regional Office, at (404) 562–7000, (or for hearing impaired TDD (800) 877–8339), or by email *klee@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Southern Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, January 25, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–1895 Filed 1–27–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: International Dolphin Conservation Program.

OMB Control Number: 0648–0387.

Form Number(s): NA.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 139.

Average Hours per Response: Permit applications, 10 minutes and 35 minutes; notifications regarding changes, 10 minutes and 35 minutes; tracking of verification of dolphin-safe tuna: tuna tracking submission forms and monthly tuna receiving reports, 60 minutes each; other notifications and reports, 10 minutes, and documentary evidence requests by the NOAA Fisheries, Southwest Region Administrator, 30 minutes.

Burden Hours: 348.

Needs and Uses: The National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act (Act). The Act allows entry of yellowfin tuna into the United States (U.S.), under specific conditions, from nations in the International Dolphin Conservation Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean (ETP) on terms equivalent with the vessels of other nations. NOAA collects information to allow tracking and verification of ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

The regulations implementing the Act are at 50 CFR parts 216 and 300. The recordkeeping and reporting requirements at 50 CFR parts 216 and 300 form the basis for this collection of information. This collection includes permit applications, notifications, tuna tracking forms, reports, and certifications that provide information on vessel characteristics and operations in the ETP, the origin of tuna and tuna products, and certain other information necessary to implement the Act.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–1865 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: NWHI Mokupapapa Discovery Center Exhibit Evaluation.

OMB Control Number: 0648–0582.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 250.

Average Hours per Response: 7 minutes, 30 seconds.

Burden Hours: 31.

Needs and Uses: This request is for a revision and extension of a currently approved information collection. Mokupapapa Discovery Center (Center) is an outreach arm of Papahanaumokuakea Marine National Monument that reaches 60,000 people each year in Hilo, Hawai'i. The Center was created eight years ago to help raise support for the creation of a National Marine Sanctuary in the Northwestern Hawaiian Islands. Since that time, the area has been proclaimed a Marine National Monument and the main messages NOAA is trying to share with the public have changed to better reflect the new monument status, UNESCO World Heritage status and the joint management by the three co-trustees of the Monument. NOAA therefore is seeking to find out if people visiting our Center are receiving our new messages by conducting an optional exit survey. The exit survey is the basis for the information collection revision.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 24, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–1868 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Special Census Program

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 30, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Direct all requests for additional information, or copies of the information collection instrument(s), and instructions to J. Michael Stump or Tashakima Cross Bowser, Bureau of the Census, 4600 Silver Hill Road, Field Division, Special Census Branch, Location 5H117, Washington, DC 20233 and/or call (301) 763–1429.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special Census Program is a reimbursable service offered and performed by the Census Bureau for the government of any state, county, city, or other political subdivision within a state. This includes the District of Columbia, the government of any possession or area over which the U.S. exercises jurisdiction, control, or sovereignty, and other governmental units that require current population data between decennial censuses.

Many states use Special Census population statistics to determine the distribution of funds to local jurisdictions. The local jurisdictions

may also use the data to plan new schools, transportation systems, housing programs, or water treatment facilities.

The Census Bureau will use the following forms to conduct the various Special Census operations:

SC–1, Special Census Enumerator Questionnaire—This interview form will be used to collect special census data at regular housing units (HU), and eligible units in Transient Locations (TL) such as RV parks, marinas, campgrounds, hotels or motels.

SC–1 (SUPP), Continuation Form for Enumerator Questionnaires—This interview form will be used to collect special census data at a regular HU or eligible units in a TL, when there are more than five members in a household.

SC–1 (Phone/WYC), Special Census Enumeration Questionnaire—This interview form will be used to collect special census data when a respondent calls the local special census office.

SC–2, Group Quarters Questionnaire—This interview form will be used to collect special census data at group quarters (GQ) such as hospitals, prisons, boarding and rooming houses, college dormitories, military facilities, and convents.

SC–3 (RI), Enumeration Reinterview Form—This is a quality assurance form used by enumerators to conduct an independent interview at a sample of HUs. Special Census office staff will compare the data collected on this form with the original interview to make sure the original enumerator followed procedures.

SC–116, Group Quarters Enumeration Control Sheet—This page will be used by Special Census enumerators to list residents/clients at GQs.

SC–117, TL Enumeration Record—This forms will be used by office staff to collect contact information and schedule interviews for TLs, to determine the type of TL, and to estimate the number of interviews to be conducted.

SC–351, Group Quarters Initial Contact Checklist—This checklist will be used by enumerators to collect contact information and to determine the type of GQ.

SC–920, Address Listing Page— This page will include existing addresses from the MAF. Special Census enumerators will update these addresses, if needed, at the time of enumeration.

SC–921(HU), Housing Unit Add Page—This page will be used by enumerators to add HUs that are observed to exist on the ground, that are not contained on the address listing page.

SC–921(GQ), Group Quarter Add Page—This page will be used by enumerators to add GQs that are observed to exist on the ground, that are not contained on the address listing page.

SC–1(F), Information Sheet, and the Confidentiality Notice—This notice is required by the Privacy Act of 1974. Special Census field staff are required by law to give an Information Sheet to each person from whom they request census-related information.

The Special Census Program will include a library of forms and the operational procedures used for the many Special Censuses we anticipate conducting this decade. The Census Bureau will establish a reimbursable agreement with a variety of potential special census customers that are unknown at this time. No additional documentation will be provided to OMB in advance of conducting any Special Census utilizing the library of standard forms and procedures. However, any deviation from the standard forms or procedures, such as asking additional questions, will be submitted to OMB for approval. The Special Census program will provide OMB an annual report summarizing the activity under the clearance for the year.

II. Method of Collection

The Special Census Program will use the Census 2010 Update/Enumerate (U/E) methodology. Enumerators will canvass their assigned areas, with an address register that contains addresses obtained from the MAF. Special Census enumerators will update the address information as needed, based on their observation of HUs, TLs or GQs that exist on the ground. Additionally, enumerators will interview households at regular HUs, eligible units at TLs, and residents at GQs using the appropriate Special Census forms.

III. Data

OMB Control Number: 0607–0368.

Form Number: SC–1, SC–1(SUPP), SC–1(Phone/WYC), SC–2, SC–3(RI), SC–116, SC–117, SC–351, SC–920, SC–921(HU), SC–921(GQ), SC–1(F).

Type of Review: Regular submission.

Affected Public: Individual households, businesses, and for profit and not-for-profit institutions.

Estimated Number of Respondents: 500,000.

Estimated Time per Response: 5.625 minutes.

Estimated Total Annual Burden Hours: 46,875.

Estimated Total Cost: There is no cost to respondents other than their time.

Respondents Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 196.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 25, 2012.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–1896 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Certain Polyester Staple Fiber From Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Michael A. Romani, 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) 482–0198.

SUPPLEMENTARY INFORMATION:

Background

At the request of interested parties, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan for the period May 1, 2010, through April 30, 2011. *See Initiation of*

Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 76 FR 37781 (June 28, 2011). The preliminary results are currently due no later than January 31, 2012.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published in the **Federal Register**. If it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

We determine that it is not practicable to complete the preliminary results of this review by the current deadline of January 31, 2012, because we require additional time to analyze responses and obtain further information with respect to the respondent's reported quarterly cost of production. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the preliminary results of this review by 85 days to April 25, 2012.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 23, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–1964 Filed 1–27–12; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2012–0008]

CPSC Symposium on Phthalates Screening and Testing Methods

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is announcing its intent to hold a symposium on phthalates screening and testing methods. The symposium will be held at the CPSC's National Product Testing and Evaluation Center in Rockville, Maryland, on March 1, 2012. We invite interested parties to participate in or attend the symposium and to submit comments.

DATES: The symposium will be held from 10 a.m. to 3 p.m. on March 1, 2012. Individuals interested in serving on panels or presenting information at the symposium should register by February 9, 2012; all other individuals who wish to attend the symposium should register by February 24, 2012. Comments must be received by February 27, 2012.

ADDRESSES: The symposium will be held at the CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, Maryland 20850. There is no charge to attend the symposium. Persons interested in serving on a panel, presenting information, or attending the symposium should register online at: *http://www.cpsc.gov/meetingsignup.html*, and click on the link titled, ''Phthalates Testing Symposium.'' More information about the symposium will be posted at *www.cpsc.gov/about/cpsia/phthalatestest.html*.

You may submit comments, identified by Docket No. CPSC–2012–0008, 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 820, 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. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information 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: Matthew Dreyfus, Ph.D., Directorate for Laboratory Sciences, 5 Research Place, Rockville, MD 20850, (301) 987–2094, *mdreyfus@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. What does the law require?

Section 108 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314) permanently prohibits the sale of any ''children's toy or child care article'' containing more than 0.1 percent of each of three specified phthalates: di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), and benzyl butyl phthalate (BBP). Section 108 of the CPSIA also prohibits on an interim basis, the sale of any ''children's toy that can be placed in a child's mouth'' or ''child care article'' containing more than 0.1 percent of each of three additional phthalates: diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), and di-n-octyl phthalate (DNOP).

Section 14(a)(2) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(2)) establishes testing requirements for children's products that are subject to a children's product safety rule. (Section 3(a)(2) of the CPSA (15 U.S.C. 2052(a)(2)) defines a ''children's product'' as a consumer product designed or intended primarily for children 12 and younger.) Section 14(a)(2)(A) of the CPSA also states that, before a children's product that is subject to a children's product safety rule is imported for consumption or warehousing or distributed in commerce, the manufacturer or private labeler of such children's product must submit sufficient samples of the children's product, ''or samples that are identical in all material respects to the product,'' to an accredited ''third party conformity assessment body'' to be tested for compliance with the children's product safety rule. Based on such testing, the manufacturer or private labeler, under section 14(a)(2)(B) of the CPSA, must issue a certificate that certifies that such children's product complied with the children's product safety rule based on the assessment of a third party conformity assessment body accredited and CPSC-approved to perform such tests.

In the **Federal Register** of August 10, 2011 (76 FR 49286), we published a notice of requirements establishing the accreditation criteria for third party conformity assessment bodies to assess

conformity with the limits on phthalates in children's toys and child care articles. The notice of requirements described the test methods that third party conformity assessment bodies should use when testing for phthalates. In brief, the test methods identified in the notice of requirements are:

• CPSC–CH–C1001–09.3, Standard Operating Procedure for Determination of Phthalates, issued on April 1, 2010. This test method can be downloaded from the CPSC Web site at: *http://www.cpsc.gov/about/cpsia/CPSC–CH–C1001–09.3.pdf*; and/or

• GB/T 22048–2008, Toys and Children's Products—Determination of Phthalate Plasticizers in Polyvinyl Chloride Plastic, issued on June 16, 2008. Information about this method is available at: *http://220.194.5.109/stdlinfo/servlet/com.sac.sacQuery.GjbzcxDetailServlet?std_code=GB/T%2022048–2008*.

Thus, third party conformity assessment bodies use either of the two test methods identified immediately above when they test children's toys and child care articles for compliance with the phthalates limits.

II. What do we hope the symposium will accomplish?

The CPSIA's phthalate restrictions, coupled with the testing and certification requirements in the CPSA, have created certain challenges for manufacturers, retailers, and third party conformity assessment bodies (more commonly known as ''testing laboratories''). Therefore, we intend to hold the first CPSC Symposium on Phthalates Screening and Testing Methods on March 1, 2012, at our National Product Testing and Evaluation Center, located at 5 Research Place, Rockville, Maryland 20850. The symposium will run from 10 a.m. to 3 p.m.

Our goal is to review available and emerging technologies for detecting phthalates and to stimulate discussion of technological needs to improve testing methods. We intend to ensure that the advantages and limitations of screening and testing methods are discussed. We plan to use a combination of technical presentations and discussion panels to explore these issues at the symposium.

III. What topics will be addressed at the symposium?

We plan to cover the following topics:

• Methods for increased quality control, from the manufacturing process to testing a final product;

• Available chemical analysis instrumentation and techniques, including infrared spectroscopy (FTIR), Thermal Desorption, Direct Analysis Real Time Mass Spectrometry (DART–MS), and Gas Chromatography/Mass Spectrometry (GC/MS);

• Advantages and limitations of available technology; and

• Emerging organic chemical detection and quantification technologies.

We will prepare a detailed agenda based on scheduled presenters and expected attendance, and we will make the agenda available on our Web site at: *www.cpsc.gov/about/cpsia/phthalatetestagenda.pdf*.

IV. Details Regarding the Symposium

A. When and where will the symposium be held?

The symposium will be held from 10 a.m. to 3 p.m. on March 1, 2012, at the CPSC's National Product Testing and Evaluation Center, 5 Research Place, Rockville, Maryland 20850.

B. How do you register for the symposium?

If you would like to make a presentation at the symposium or to be considered as a panel member for a specific topic or topics, you should register by February 9, 2012. (See the **ADDRESSES** portion of this document for the Web site link and instructions on where to register.) We also ask that you indicate whether you would like to serve on a panel or make a presentation, and indicate the topic(s) for which you wish to be considered. We ask that you limit the number of topics to no more than three. We will select panelists and individuals who will make presentations at the symposium, based on considerations such as the individual's familiarity or expertise with the topic to be discussed; the practical utility of the information to be presented (such as a discussion of specific methods), and the individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer organizations).

In addition, please inform Dr. Matthew Dreyfus, *mdreyfus@cpsc.gov*, (301) 987–2094 of any special equipment needs required to make a presentation. While an effort will be made to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the number of persons who wish to speak on a given topic and the agenda. We recommend that individuals and organizations with common interests consolidate or coordinate their presentations and request time for a joint presentation. If you wish to make a presentation and want to make copies of your presentation or other handouts available, you should bring copies to the symposium. We will notify those who are selected to make a presentation or participate in a session or panel at least two weeks before the symposium. Selections will be made in attempt to ensure that a wide variety of interests are represented.

If you do not wish to make a presentation, we ask that you register by February 24, 2012. Please be aware that seating will be on a first-come, first-served basis. If you are unable to attend the symposium, it will be available through a webcast, but you may not be able to interact with the panels and presenters.

If you need special accommodations because of disability, please contact Dr. Matthew Dreyfus, *mdreyfus@cpsc.gov*, (301) 987–2094 at least 10 days before the symposium.

In addition, we encourage written or electronic comments to the docket. Written or electronic comments will be accepted until February 27, 2012. Please note that all comments should be restricted to the topics covered by the symposium.

C. What happens if few people register for the symposium?

If fewer than 15 individuals register for the symposium, we may cancel the symposium. If we decide to cancel the symposium, we will post a cancellation notice by February 23, 2012, on the Web page for the symposium insert web address and send an email to all registered participants who provide their email address when they register.

Dated: January 25, 2012.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2012–1931 Filed 1–27–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its

information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 30, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: January 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Innovation and Improvement.

Type of Review: Extension.

Title of Collection: Transition to Teaching Survey.

OMB Control Number: 1855–0018.

Agency Form Number(s): N/A.

Total Estimated Number of Annual Responses: 42.

Total Estimated Number of Annual Burden Hours: 42.

Abstract: This is a request for approval to collect information from Transition to Teaching (TTT) grantees that will be used to describe the extent to which local education agencies that received TTT grant funds have met the goals relating to teacher recruitment and retention described in their application. TTT grantees are funded for a period of five years. Currently, grantees are required by statute to submit an interim project evaluation to the Department of Education (ED) at the end of the third project year and a final project evaluation at the project's end. In turn, the TTT program is required to prepare and submit to the Secretary and to Congress interim and final program evaluations containing the results of these grantee project evaluation reports. An analysis of these reports has provided some data on grantee activities, prior to the usage of the TTT survey, missing or incomplete data made it difficult to aggregate data across grantees in order to accurately describe to Congress the extent of program implementation. This data collection allows ED to gather data on a common set of indicators across grantees in order to describe and improve program inplementation with the end goal of improving program performance.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4794. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–1802 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 29, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 24, 2012

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Annual Program Cost Report.

OMB Control Number: 1820–0017.

Agency Form Number(s): RSA–2.

Frequency of Responses: Annually.

Affected Public: State, Local, and Tribal Government.

Total Estimated Number of Annual Responses: 80.

Total Estimated Annual Burden Hours: 376.

Abstract: The RSA–2 collects expenditure and service data from state vocational rehabilitation agencies under Title I of the Rehabilitation Act of 1973, as amended, in order for the Rehabilitation Services Administration to manage, administer, and evaluate vocational rehabilitation programs.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4753. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2012–1801 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before February 29, 2012.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 24, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Elementary and Secondary Education

Type of Review: Extension.

Title of Collection: Impact Aid Application for Section 8002 Assistance.

OMB Control Number: 1810–0036.

Agency Form Number(s):

Frequency of Responses: Annually.

Affected Public: Federal Government;State, Local, or Tribal Gov't, SEAs or LEAs.

Total Estimated Number of Annual Responses: 250.

Total Estimated Annual Burden Hours: 1,625.

Abstract: The U.S. Department of Education (ED) is requesting approval for the Application for Assistance under Section 8002 of Title VIII of the Elementary and Secondary Education Act. This application is for a grant program otherwise known as Impact Aid Payments for Federal Property. Local Educational Agencies that have lost taxable property due to Federal activities request financial assistance by completing an annual application. Regulations for Section 8002 of the Impact Aid Program are found at 34 CFR part 222, subpart B. ED is requesting renewal of its three-year clearance under the same collection number.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04726. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2012–1798 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2012–2013 Award Year Deadline Dates

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the 2012–2013 award year deadline dates for the submission of requests and documents from postsecondary institutions for the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (collectively, the ''campus-based programs'').

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for their cost of education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Electronic Announcements,'' the Department will continue to provide additional information for the individual deadline dates listed in the table under the Deadline Dates section of this notice. You will also find the information on the Information for Financial Aid Professionals (IFAP) Web site at: *www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2012–2013 award year deadline dates for the submission of applications, reports, waiver requests, and other documents for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2012–2013 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2011–2012 funds and the request for supplemental FWS funds for the 2012–2013 award year.	The Reallocation Form must be submitted electronically via the Internet and is located in the ''Setup'' section of the FISAP at the following Web site: *www.cbfisap.ed.gov*.	August 17, 2012.
2. The 2011–2012 Fiscal Operations Report and 2013–2014 Application to Participate (FISAP).	The FISAP is located at the following Web site: *www.cbfisap.ed.gov*. The FISAP must be submitted electronically via the Internet, and the FISAP's signature page must be mailed to: FISAP Administrator, 2020 Company, LLC, 3110 Fairview Park Drive, Suite 950, Falls Church, VA 22042–4548.	October 1, 2012.
3. The Work Colleges Program Report of 2011–2012 award year expenditures.	The Work Colleges Program Report is located in the ''Setup'' section of the FISAP at the following Web site: *www.cbfisap.ed.gov*. The report must be submitted electronically via the Internet, and a printed copy with an original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street, NE., Room 62E3, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	October 1, 2012.
4. The 2011–2012 Financial Assistance for Students with Intellectual Disabilities Expenditure Report.	The Financial Assistance for Students with Intellectual Disabilities Expenditure Report is located in the ''Setup'' section of the FISAP at the following Web site: *www.cbfisap.ed.gov.* The report must be submitted electronically via the Internet, and a printed copy with an original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, CTP Program, 830 First Street, NE., Room 62E3, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	October 1, 2012.
5. The 2011–2012 FISAP Edit Corrections and Perkins Cash on Hand Update.	The FISAP is located at the following Web site: *www.cbfisap.ed.gov.* The FISAP Edit Corrections and Perkins Cash on Hand Update must be submitted electronically via the Internet.	December 14, 2012.
6. A request for a waiver of the 2013–2014 award year penalty for the underuse of 2011–2012 award year funds.	The request for a waiver is located in Part II, Section C of the FISAP at the following Web site: *www.cbfisap.ed.gov*. The request and justification must be submitted electronically via the Internet.	February 8, 2013.

2012–2013 AWARD YEAR DEADLINE DATES—Continued

What does an institution submit?	How is it submitted?	What is the deadline for submission?
7. The Institutional Application and Agreement for Participation in the Work Colleges Program for the 2013–2014 award year.	The Institutional Application and Agreement for Participation in the Work Colleges Program can be found in the ''Setup'' section of the FISAP at the following Web site: *www.cbfisap.ed.gov*. The application and agreement must be submitted electronically via the Internet, and a printed copy with original signature must be submitted by one of the following methods: Hand deliver to: U.S. Department of Education, Federal Student Aid, Grants & Campus-Based Division, 830 First Street, NE., Room 62E3, ATTN: Work Colleges Coordinator, Washington, DC 20002, or Mail to: The address listed above for hand delivery. However, please use ZIP Code 20202–5453.	March 8, 2013.
8. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2013–2014 award year.	The FWS Community Service waiver request can be found in the ''Setup'' section of the FISAP at the following Web site: *www.cbfisap.ed.gov*. The request and justification must be submitted electronically via the Internet.	April 26, 2013.

Note:
- The deadline for electronic submissions is 11:59:00 p.m. (Washington, DC time) on the applicable deadline date. Transmissions must be completed and accepted by 12:00:00 midnight to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked or you must have a mail receipt stamped by the applicable deadline date.
- Paper documents that are hand delivered by a commercial courier must be received no later than 4:30:00 p.m. (Washington, DC time) on the applicable deadline date.
- The Secretary may consider on a case-by-case basis the effect that a major disaster, as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)), or another unusual circumstance has on an institution in meeting the deadlines.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery (or from a commercial courier), we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If you mail your paper documents through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from you or a commercial courier between 8 a.m. and 4:30 p.m., Washington, DC time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in specific ''Electronic Announcements,'' which are posted on the Department's IFAP Web site (*www.ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook which is also posted on the Department's IFAP Web site.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Kathleen Wicks, Director of Grants & Campus-Based Division, U.S. Department of Education, Federal Student Aid, 830 First Street NE., Union Center Plaza, room 62E3, Washington, DC 20202–5453. *Telephone:* (202) 377–3110 or via email: *kathleen.wicks@ed.gov.*

If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–(800) 877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed in this section.

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.

Program Authority: 20 U.S.C. 1070b *et seq.* and 1087aa *et seq.;* 42 U.S.C. 2751 *et seq.*

Dated: January 25, 2012.

James W. Runcie,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2012–1966 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: White House Initiative on Educational Excellence for Hispanics, Department of Education.

ACTION: Notice of an Open Conference Call Meeting.

SUMMARY: This notice sets forth the announcement of a conference call meeting of the President's Advisory Commission on Educational Excellence for Hispanics. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of this meeting.

DATES: Wednesday, Feb. 8, 2012.

Time: 5:30 p.m.–6:30 p.m. Eastern Standard Time.

ADDRESSES: Not Applicable—Conference Call.

FOR FURTHER INFORMATION CONTACT: Glorimar Maldonado, Chief of Staff, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W110, Washington, DC 20202; telephone: (202) 401–1411, (202) 401–0078, or (202) 870–1227.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Agenda

The Commission will discuss its 2012 strategic work plan from its October 2011 meeting, agree on upcoming meeting dates and establish subcommittees.

There will not be an opportunity for public comment during this meeting due to time constraints. However, members of the public may submit written comments related to the work of the Commission via *WhiteHousefor HispanicEducation@ed.gov* no later than Feb. 3, 2012. A recording of this meeting will be posted on the Commission's Web page at *http://www2.ed.gov/about/inits/list/hispanic-initiative/index.html* no later than Feb. 13, 2012.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202, Monday through Friday (excluding federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may 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) on the Internet at: *www.ed.gov/fedregister/index.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–(866) 512–1830; or in the Washington, DC, area at (202) 512–0000.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2012–1965 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Promising and Practical Strategies to Increase Postsecondary Success

AGENCY: Department of Education.

ACTION: Request for Information (RFI); Promising and Practical Strategies to Increase Postsecondary Success.

SUMMARY: The Secretary of Education (Secretary) invites institutions of higher education (IHEs), non-profit organizations, States, systems of higher education, adult education providers, researchers, and institutional faculty and staff, or consortia of such entities, to provide the Department of Education (Department) with information about promising and practical strategies, practices, programs, and activities (promising and practical strategies) that have improved rates of postsecondary success, transfer, and graduation. The Department believes this information will be of interest to others in situations similar to those described in the submissions, and useful during future deliberations, possibly including discussions concerning improvements to the Higher Education Act of 1965, as amended (HEA), and other legislative proposals to the Congress. We are most interested in obtaining information about strategies that emphasize the quality of what students learn and timely or accelerated attainment of postsecondary degrees or certificates, including industry-recognized credentials that lead to improved learning and employment outcomes. Information provided in response to this RFI will be posted on the Department's postsecondary completion Web site (Postsecondary Completion Web site) in a form that will allow information about promising and practical strategies to be shared, commented on, and discussed by interested parties, including employees of IHEs, State officials, students, and members of the general public.

DATES: Responses to this RFI may be submitted at any time after the publication of this notice, but in order for a response to be considered in the first round of reviews, it should be submitted by April 30, 2012. We will

review and post responses received after April 30, 2012 on a regular basis.

ADDRESSES: Provide any submission related to this RFI to the following email address: *collegecompletion@ed.gov.* Alternatively, mail or deliver submissions to David Soo, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David Soo, (202) 502–7742, *david.soo@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. Individuals with disabilities can obtain this document in an accessible format (e.g. braille, large print, audiotape, or compact disc) by contacting Warren Farr at (202) 377–4380 or *warren.farr@ed.gov.*

SUPPLEMENTARY INFORMATION:

Background

In February 2009, President Obama established a goal for the United States to regain, by 2020, its position as the nation with the highest percentage of its population holding postsecondary degrees and credentials. The Secretary is interested in collecting and making available to the public information on promising and practical strategies that can help educational institutions, States, non-profit organizations, and other entities contribute to achieving this goal.

The Secretary is particularly interested in information about promising and practical strategies that IHEs, States, non-profit organizations, or other entities have carried out and that could be replicated and/or scaled with the goal of helping IHEs and States more effectively contribute to meeting the degree attainment goal set by the President and to improving student success generally. In addition to descriptions of these strategies, we are interested in receiving information about the factors perceived as most important to a strategy's successful implementation, the evidence that led the respondent to determine the importance of such factors, and the issues that the respondent believes would need to be addressed in order to encourage successful replication elsewhere.

The Secretary will establish the Postsecondary Completion Web site to serve as an online resource that makes publicly available the information submitted in response to this RFI. While the Department intends to review submissions made pursuant to this RFI prior to posting them on the Postsecondary Completion Web site, it will not be responsible for and will not certify the accuracy of any of the information or claims contained in these submissions. The Department will post a disclaimer to this effect on the Postsecondary Completion Web site. The individual or entity responsible for providing the Department with a submission will remain responsible for the accuracy of the information in the submission.

Once the Department establishes the Postsecondary Completion Web site and posts the information it receives in response to this RFI, the Secretary intends to publish a second notice in the **Federal Register** to announce the availability of this information and to invite feedback about the extent to which the strategies and ideas presented might be applicable to different institutions in different contexts, and what difficulties might arise in trying to implement them. The notice will again state that the Department will not be responsible for and will not certify the accuracy of any of the information or claims contained in the submissions. Finally, the Secretary will establish an internal process for the continuous improvement, updating, and augmentation of the information made available on the Postsecondary Completion Web site.

This RFI is issued under the authority of the Department of Education Organization Act (DEOA), 20 U.S.C. 3402(4), by which the Secretary is authorized to promote improvements in the quality and usefulness of education through federally supported research, evaluation, and sharing of information.

Guidance for Submitting Documents: Respondents to this RFI should provide submissions attached to an electronic mail message sent to the email address provided in the **ADDRESSES** section of this notice. To help ensure accessibility to all interested parties, we request that all submissions comply with the requirements of section 508 of the Rehabilitation Act of 1973, or be submitted in an electronic format that can be made accessible, such as Microsoft Word. We will accept submissions in any electronic or written form provided, but submissions in forms that are not Section 508 compliant and not accessible will not be posted online. Instead, we will index these submissions and make them available in an accessible format upon request. We ask that each respondent include the name and address of his or her institution, consortium, or affiliation, if any, and the name, title, mailing and email addresses, and telephone number of a contact person for his or her institution or consortium or affiliation, if any. We also ask that each submission begin with a brief one-paragraph abstract that provides an overview of the information discussed therein.

The submission should include contact information (name, title, phone number, and email address) for an officer of the institution or an official of the submitting entity who is authorized to approve the submission. The Department will contact the officer to confirm authorization for the submission.

If the submission is from a consortium of institutions, we ask that the respondent identify all members of the consortium but provide only the name of one contact person for the consortium. We also ask that the submission include contact information for the consortium's executive director so that we can confirm authorization for the submission.

Request for Information

Through this RFI, we seek to collect information on promising and practical strategies that IHEs, States, or other entities have used with the goal of helping improve rates of postsecondary success, transfer, and graduation.

At this time, we seek the assistance of IHEs, non-profit organizations, States, systems of higher education, adult education providers, researchers, and institutional faculty and staff who can offer information about promising and practical strategies that they have implemented, with or without Federal support, and that they believe have made measurable contributions to accelerated attainment of postsecondary degrees or certificates, including industry-recognized-credentials that lead to improved learning and employment outcomes.

When submitting information about a promising and practical strategy in response to this RFI, we request that respondents demonstrate how the promising and practical strategy is supported by data on outcomes. If a strategy described in a submission does not have extensive outcome data, the respondent should submit evidence that the proposed strategy, or one similar to it, has been attempted previously, even if on a limited scale or in a limited setting, and yielded promising results. We are particularly interested in strategies, practices, programs, or activities supported by outcome data or for which evaluations have been conducted that can support any conclusions the respondent makes about the strategies described. We are also interested in receiving information

about the costs of implementing the promising and practical strategies, both overall and on a per-participant basis.

We note that previous efforts to improve outcomes from postsecondary institutions have included improved student support services, early college and middle college programs, successful remediation programs, open educational resources (that is, resources that are made freely available to students as a substitute for commercial, proprietary learning materials), distance and tele-presence courses, pay-for-performance scholarships and financial assistance, nontraditional course schedules and sequences, and peer support. We invite respondents to this RFI to provide current information on the implementation of these strategies and any other promising and practical strategy that they believe has helped to improve postsecondary success, transfer, and graduation. Specifically, we are interested in receiving documents and reports that include the following information:

- A detailed description of the promising and practical strategy:
  - Clear descriptions of the college completion obstacle addressed, including the dimensions of the problems or obstacles targeted by the intervention.
  - The theory of action that provides the basis for the promising and practical strategy.
  - A history of how the promising and practical strategy was developed.
  - A description of the way submitters or others measured the outcomes of the promising and practical strategy, and of any evaluations of the strategy, where available, including references to published or related studies and links to the relevant data or evaluation. In addition, respondents should discuss any factor or factors that made measuring success difficult and how they addressed those factors.
- A discussion of any difficulties or challenges that arose during the implementation of the promising and practical strategy and of any adjustments that the institution or organization made in response to those challenges.
- A description of the factor or factors the respondent believes were most important to the success of the promising and practical strategy. This could include the participation of a particular individual in the implementation of the strategy or some other reason that goes beyond the design of the activity undertaken.
- A description of the elements of the promising and practical strategy that the respondent believes did not work, including a discussion of why the respondent believes an element did not work and what the respondent would do to change the activity in question in the future.
- Suggestions about how other institutions might best replicate the promising and practical strategy and what potential concerns could make replication difficult.
- Detailed discussion of any Federal regulatory or statutory requirements or other laws, rules, or regulations that made successfully implementing the promising and practical strategy easier or more difficult.

This list of items we invite for submission is illustrative only; respondents may also address other issues that they believe are appropriate to the promising and practical strategies they describe.

Rights to Materials Submitted

By submitting material (e.g., descriptions of promising and practical strategies or data supporting strategies) in response to this RFI, the respondent is agreeing to grant the Department a worldwide, royalty-free, perpetual, irrevocable, non-exclusive license to use the material and post it on the Postsecondary Completion Web site. Further, the respondent agrees that it owns, has a valid license, or is otherwise authorized to provide the material to the Department for inclusion on the Postsecondary Completion Web site. The Department will not provide any compensation for material submitted in response to this RFI.

Request for Meta Data Tags

The Secretary anticipates a significant number of responses to this RFI. To maximize the utility of the information we can make available on the Postsecondary Completion Web site, and to make it easier for interested parties to search this information, the Department will include specific words or phrases—also known as ''keywords'' or meta data ''tags''—in the database used to support the Web site. Therefore, the Secretary strongly encourages respondents to this RFI to use keywords or tags to identify components of the strategies described in their responses. The keywords or tags identified should be linked to, and accurately reflect substantial components of, the strategies, practices, programs, or other activities described in the submission. To simplify searches of the database created by the responses to this RFI, the Secretary provides in Appendix A of this RFI a list of standard keywords and tags that would be useful for the Postsecondary Completion Web site. The Secretary strongly encourages that respondents select—to the greatest extent possible—from among these standard keywords and tags when identifying tags for their submission. In the event that none of the words or phrases in Appendix A is sufficiently precise for the promising and practical strategy that is the subject of the response, respondents may substitute other keywords or tags of their own choosing. The Secretary strongly encourages respondents to provide no more than eight keywords or tags for each strategy and limit each tag to no more than three words per tag and 28 characters per word. By limiting keywords and tags in this manner, the Secretary can most efficiently index the database and enable effective searches of all information obtained through this RFI.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 3204(4).

Dated: January 25, 2012.

Martha Kanter,

Under Secretary of Education.

Appendix A: Standard Keywords and Tags

- Accelerated Learning
- Achievement Gap Closure
- Adult Education
- Affordability
- Assessment Technology
- Badges
- Basic Skills
- Blended Learning
- Block Scheduling

- Career Pathways
- Certificate Attainment
- Civic/Community Engagement
- Civic Learning
- Cognitive Tutors
- Community of Practice
- Competency-Based Learning
- Contextualized Learning
- Cost Savings
- Data Collection/Use
- Degree Attainment
- Developmental/Remedial Education
- Digital Materials
- Dual Degrees
- Earn and Learn
- Efficiency
- Employer Partnership
- Course Articulation
- Student Services
- Game Design
- Improving Achievement
- Industry-Driven Competencies
- Industry-Recognized Credentials
- Job Placement
- Learning Assessment
- Learning Communities
- Mentoring
- Mobile Devices
- Modular Curriculum
- Momentum Points
- Non-Traditional Age Students
- On-the-Job Training
- Online Teaching/Learning
- Open Educational Resources
- Paid Internships
- Part-Time Students
- Pay-for-Performance
- Persistence
- Personalized Instruction
- Productivity
- Real-Time Online Interactions
- Registered Apprenticeships
- Retention
- SCORM
- Self-Paced Learning
- Simulations
- Skill Assessments
- Stackable Credentials
- STEM
- Technology-Enabled Learning
- Time to Degree
- Transfer and Articulation
- Tuition Reduction
- Underrepresented Students
- Virtual Environments
- Web-Based Learning

Note 1: SCORM stands for Sharable Content Object Reference Model.

Note 2: STEM stands for Science, Technology, Engineering, and Mathematics.

Note 3: In the event that none of the keywords or tags listed in this appendix is a sufficiently precise descriptor, submitters should include alternate keyword or tags of their own choosing, not to exceed three words per tag, with a maximum of 28 characters for each keyword or tag. See the discussion elsewhere in this RFI under the heading ''Request for Meta Data Tags'' for more guidance on the use of keywords and tags.

[FR Doc. 2012–1963 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Number: 84.368; Docket ID ED–2012–OESE–0002]

Proposed Revision to Selection Criteria—Enhanced Assessment Instruments

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes to amend the selection criteria under the Enhanced Assessment Instruments Grant program, also called the Enhanced Assessment Grant (EAG) program, as established in the notice of final priorities, requirements, definitions, and selection criteria (2011 NFP). The 2011 NFP established specific priorities, requirements, definitions, and selection criteria that may be used for the EAG program. The changes proposed in this notice would provide the Secretary with additional flexibility with respect to selection criteria for EAG competitions in 2012 that use fiscal year (FY) 2011 funds and for subsequent competitions. We believe that these proposed changes would enable the Department to administer this program more effectively, simplify the application and review processes, and better ensure that the strongest applications receive EAG funds.

DATES: We must receive your comments on or before February 29, 2012.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''How To Use This Site.''
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed revisions to selection criteria, address them to Student Achievement and School Accountability Programs, Office of Elementary and Secondary Education (Attention: EAG Comments), U.S. Department of Education, 400 Maryland Avenue SW., mail stop 6132, Washington, DC 20202–[fill in last four digits of zip code].

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Collette Roney. Telephone: (202) 401–5245 or by email: *Collette.Roney@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

Invitation To Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final revisions to the selection criteria, we urge you to identify clearly the specific proposed revisions your comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed revisions to the selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person, in room 3W226, 400 Maryland Avenue SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of the Program: The purpose of the EAG program is to enhance the quality of assessment instruments and systems used by States for measuring the academic achievement of elementary and secondary school students.

Program Authority: 20 U.S.C. 7301a.

Summary of Proposed Changes: The changes we are proposing in this notice would provide the Secretary the flexibility, in establishing selection criteria used in grant competitions conducted under the EAG program using FY 2011 funds or funds from subsequent years to choose selection criteria and factors—(a) From those established in the 2011 NFP for the EAG program, published in the **Federal Register** on April 19, 2011 (76 FR 21986), (b) from the general selection criteria in the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.210, (c) based on statutory provisions in accordance with 34 CFR 75.209, or (d) from any combination of the selection criteria and factors in paragraphs (a) through (c).

These proposed changes would allow the Department more flexibility to better achieve the program's purposes. Specifically, the Department would have the flexibility to use the most appropriate selection criteria in any year in which this program is in effect, ensuring that the EAG program can be adapted to address the evolving needs of the American education system with respect to the assessments used by States to hold schools and districts accountable for student performance.

Selection Criteria

Background

The 2011 NFP established specific selection criteria for the EAG program that the Department can use to evaluate EAG applications.[1] The Department may apply one or more of these selection criteria in any year in which a competition for program funds is held.

We have concluded that greater flexibility is desirable for choosing selection criteria, and the factors used to determine the degree to which an applicant meets the criteria, in order to enable the Department to align selection criteria with the assessment needs identified by the Department and the priorities established for a given competition. Such flexibility would also allow the Department to simplify the selection criteria, as appropriate, for a particular competition. Accordingly, we are proposing in this notice that, when establishing selection criteria for an EAG competition, the Secretary may choose one or more of the selection criteria and factors—(a) Established for the EAG program in the 2011 NFP, (b) from the general selection criteria in 34 CFR 75.210, (c) based on statutory provisions in accordance with 34 CFR 75.209, or (d) from any combination of these criteria and factors for the purpose of evaluating grant applications under the EAG program.[2]

We believe that the proposed change will enable the Department to administer this program more effectively, simplify the application and review processes, and better ensure that the strongest applications receive EAG funds.

Proposed Revision to Selection Criteria

The Assistant Secretary proposes that the Secretary may use one or more of the selection criteria listed in paragraphs (a) through (d) for evaluating an application under this program. This flexibility would include the authority to reduce the number of selection criteria. Within each criterion from these sources, in order to determine the degree to which an applicant meets a criterion, the Secretary would further define each criterion by selecting one or more specific factors within a criterion or assigning factors from one criterion, from any of those sources, to another criterion, in any of those sources. We may apply one or more of these criteria in any year in which this program is in effect. In the notice inviting applications or the application package or both we will announce the maximum possible points assigned to each criterion.

(a) The selection criteria established in the 2011 NFP.

(b) The selection criteria in 34 CFR 75.210.

(c) Selection criteria based on the statutory requirements for the EAG program in accordance with 34 CFR 75.209.

(d) Any combination of selection criteria and factors in paragraphs (a) through (c).

Final Revisions to Selection Criteria

We will announce the final revisions in a notice in the **Federal Register**. We will determine the final revisions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these selection criteria, we invite applications through a notice in the **Federal Register**.[3]

Executive Orders 12866 and 13563

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those

[1] See 76 FR 21995–21996 [available at: *http://edocket.access.gpo.gov/2011/pdf/2011-9479.pdf*].

[2] The Department's regulations in EDGAR govern, among other things, the use of selection criteria to evaluate discretionary grant applications. Under 34 CFR 75.200, the Secretary may use selection criteria based on statutory provisions in accordance with 34 CFR 75.209, selection criteria in program-specific regulations, selection criteria established under 34 CFR 75.210, or any combination of these. The Secretary may select from the menu one or more criteria that best enable the Department to select the highest-quality applications, consistent with the program purpose, statutory requirements, and any priorities established for a competition. For additional information on 34 CFR 75.209 and 34 CFR 75.270, *see http://www2.ed.gov/policy/fund/reg/edgarReg/edgar.html.*

[3] Availability of funds for the EAG program for a given year is contingent upon an appropriation of funds for the program by the Congress.

approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are taking this regulatory action only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Summary of Potential Costs and Benefits

This proposed regulatory action affects only State educational agencies (SEAs) or consortia of SEAs applying for assistance under the EAG program. It creates flexibility for the Department, with respect to EAG competitions in 2012 for FY 2011 funds and for subsequent competitions, to select from among, or to combine, selection criteria that were established in the 2011 NFP criteria, selection criteria from 34 CFR 75.210, and other selection criteria based on the statute under 34 CFR 75.209. This flexibility would allow the Department to align selection criteria with program needs and ensure that the strongest applications are selected for funding under the program.

We believe that adding this flexibility would not impose a financial burden that SEAs would not otherwise incur in the development and submission of a grant application under the EAG program. In addition, under some circumstances (for example, if the Department elected to use fewer criteria or factors in a given competition), the proposed changes could reduce the financial burden of preparing an EAG grant application by a modest amount. Moreover, the Department expects a small number of applicants, which further serves to mitigate any potential costs.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 25, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–1961 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Service Contract Inventory for Fiscal Year (FY) 2011

AGENCY: Office of the Chief Financial Officer, U.S. Department of Education.

ACTION: Notice of availability—FY 2011 Service Contract Inventory.

SUMMARY: Through this notice, the Secretary announces the availability of the Department of Education's service contract inventory on its Web site, at *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* A service contract inventory is a tool for assisting an agency in better understanding how contracted services are being used to support mission and operations and whether the contractors' skills are being utilized in an appropriate manner.

FOR FURTHER INFORMATION CONTACT: Pier Connors, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 by phone at (202) 245–6919 or email at *Pier.Connors@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: Section 743 of Division C of the Consolidated Appropriations Act of 2010, P.L. 111–117, requires civilian agencies, other than the Department of Defense, that are required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270, 31 U.S.C. 501 note) to submit their inventories to the Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) by December 30, 2011. In addition, section 743 requires these agencies, which include the Department of Education, to (1) make the inventory available to the public by posting the inventory on its agency homepage, (2) provide OFPP with the Web site address (URL) on which the inventory is being posted so that the inventory can be linked to a central OMB Web page, and (3) publish in the **Federal Register** a notice announcing that the inventory is available to the public along with the name, telephone number, and email address of an agency point of contact.

Through this notice, the Department announces the availability of its inventory on the following Web site: *http://www2.ed.gov/fund/data/report/contracts/servicecontractinventoryappendix/servicecontractinventory.html.* The point of contact for the inventory is provided under the **FOR INFORMATION CONTACT** section in this notice.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, or audiotape) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: 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) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: 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 on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: Section 743 of Division C of the Consolidated Appropriations Act of 2010, Pub. L. 111–117.

Dated: January 26, 2012.

Hugh J. Hurwitz,

Deputy Chief Financial Officer.

[FR Doc. 2012–2032 Filed 1–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The Department of Energy (DOE) has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection, titled the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Commercialization Survey will satisfy the program requirements of the Small Business Act, including requirements established in the SBIR program reauthorization legislation, Public Law 106–554 and Public Law 107–50. DOE will collect the survey data via web-enabled software and provide it to the Small Business Administration (SBA) to maintain information about the DOE SBIR/STTR awards issued through the two programs. This data will be provided by DOE based on information collected from SBIR/STTR awardees. This data will be used by DOE, SBA, and Congress to assess the commercial impact of these two programs. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4560.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Chris O'Gwin by email at *chris.ogwin@science.doe.gov* or by fax at (301) 903–5488.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. New; (2) *Information Collection Request Title:* Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Commercialization Survey; (3) *Type of Request:* New; (4) *Purpose:* The DOE needs this information to satisfy the program requirements of the Small Business Act, including requirements established in the SBIR program reauthorization legislation, Public Law 106–554 and Public Law 107–50. This data will be collected by the DOE and provided to the Small Business Administration (SBA) to maintain information about SBIR/STTR awards issued through the two programs. This data will be provided by DOE based on information collected from SBIR/STTR awardees. This data will be used by DOE, SBA, and Congress to assess the commercial impact of these two programs; (5) *Annual Estimated Number of Respondents:* 2,500; (6) *Annual Estimated Number of Total Responses:* 2,500; (7) Annual Estimated Number of Burden Hours: 2,500; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 9 of the Small Business Act, as amended, codified at 15 U.S.C. 638(g).

Issued in Washington, DC, on January 20, 2012.

Manny Oliver,

SBIR/STTR Programs Director, Office of Science, U.S. Department of Energy.

[FR Doc. 2012–1910 Filed 1–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41, Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board will be renewed for a two-year period beginning January 23, 2012.

The Board provides advice and recommendations to the Assistant Secretary for Environmental Management (EM) on a broad range of corporate issues affecting the EM program. These issues include, but are not limited to, project management and oversight activities, cost/benefit analyses, program performance, human capital development, and contracts and acquisition strategies. Recommendations to EM on the programmatic resolution of numerous difficult issues will help achieve EM's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the renewal of the Environmental Management Advisory Board has been determined to be essential to the conduct of the Department's mission and to be in the public interest in connection with the performance of duties imposed the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Ms. Kristen G. Ellis, Designated Federal Officer, by telephone at (202) 586–5810 or by email at: *kristen.ellis@em.doe.gov*.

Issued at Washington, DC, on January 23, 2012.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2012–1911 Filed 1–27–12; 8:45 am]

BILLING CODE 6450–01–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: EC12–61–000.
Applicants: Bishop Hill Energy LLC II, Bishop Hill Energy III LLC, Bishop Hill Energy LLC, Bishop Hill Interconnection LLC, Bishop Hill II Holdings, LLC.
Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Bishop Hill Energy LLC, *et al.*
Filed Date: 1/20/12.
Accession Number: 20120120–5107.
Comments Due: 5 p.m. ET 2/10/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–24–000.
Applicants: Bishop Hill Interconnection LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Bishop Hill Interconnection LLC.
Filed Date: 1/20/12.
Accession Number: 20120120–5072.
Comments Due: 5 p.m. ET 2/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER97–324–024; ER97–3834–031.
Applicants: DTE Energy Trading, Inc., the Detroit Edison Company.
Description: Request for Continued Waiver of Affiliate Restrictions Related to the Detroit Edison Company's Summer 2012 Auctions for Capacity of the Detroit Edison Company, *et al.*
Filed Date: 1/20/12.
Accession Number: 20120120–5130.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER10–1537–002; ER10–1553–002; ER10–1538–002; ER10–1539–002; ER10–1540–002; ER10–1531–002; ER12–839–001.
Applicants: Entergy Nuclear Generation Company, Entergy Nuclear Power Marketing, LLC, Entergy Nuclear Vermont Yankee, LLC, Entergy Nuclear Fitzpatrick, LLC, Entergy Nuclear Indian Point 2, LLC, Entergy Nuclear Indian Point 3, LLC, Entergy Rhode Island State Energy, L.P.
Description: Notice of Non-Material Change in Status. Report/Form of Entergy Nuclear Fitzpatrick, LLC, *et al.*
Filed Date: 1/19/12.
Accession Number: 20120119–5266.
Comments Due: 5 p.m. ET 2/9/12.

Docket Numbers: ER11–4683–001; ER11–4684–001; ER11–2489–001; ER11–3620–002; ER11–2882–003; ER10–2432–002; ER10–2435–002; ER10–2440–002; ER10–2442–002; ER10–2444–002; ER10–2446–002; ER10–2449–002; ER10–2092–003; ER10–2119–003; ER10 2117–003; ER10–2118–003; ER10–3139–002.
Applicants: Boralex Fort Fairfield LP, Boralex Livermore Falls LP, York Generation Company LLC, Dartmouth Power Associates Limited Partnership, Camden Plant Holding, LLC, Pedricktown Cogeneration Company LP, Newark Bay Cogeneration Partnership, LP, Elizabethtown Energy, LLC, Lumberton Energy, LLC, Lyonsdale Biomass, LLC, Elmwood Park Power LLC, Black River Generation, LLC, Hatchet Ridge Wind, LLC, Boralex Ashland LP, ReEnergy Sterling CT Limited Partnership, Bayonne Plant Holding, LLC, Boralex Stratton Energy LP.
Description: Notification of Non-Material Change in Status.
Filed Date: 1/19/12.
Accession Number: 20120119–5268.
Comments Due: 5 p.m. ET 2/9/12.

Docket Numbers: ER12–761–001.
Applicants: MATL LLP.
Description: Supplemental Filing of Montana Alberta Tie Ltd. and MATL LLP to be effective 1/5/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5084.
Comments Due: 5 p.m. ET 2/10/12.
Docket Numbers: ER12–791–001.
Applicants: Palmco Power IL, LLC.
Description: Palmco Power IL FERC Electric Tariff to be effective 1/11/2012.
Filed Date: 1/19/12.
Accession Number: 20120119–5183.
Comments Due: 5 p.m. ET 2/9/12.

Docket Numbers: ER12–841–000.
Applicants: Southwest Power Pool, Inc.
Description: 2015R1 Westar Energy, Inc. NITSA NOA to be effective 12/1/2011.
Filed Date: 1/19/12.
Accession Number: 20120119–5178.
Comments Due: 5 p.m. ET 2/9/12.

Docket Numbers: ER12–842–000.
Applicants: New York State Electric & Gas Corporation.
Description: New York State Electric & Gas Corporation's Informational Filing Regarding Error in Posted NYSEG TSC Rate and Plan to Bill at Corrected Lower Rate.
Filed Date: 1/19/12.
Accession Number: 20120119–5267.
Comments Due: 5 p.m. ET 1/27/12.

Docket Numbers: ER12–843–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3181; Queue No. X2–089 to be effective 12/22/2011.
Filed Date: 1/20/12.
Accession Number: 20120120–5044.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–844–000.
Applicants: PJM Interconnection, LLC.
Description: Original Service Agreement No. 3180; Queue No. X2–088 to be effective 12/22/2011.
Filed Date: 1/20/12.
Accession Number: 20120120–5046.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–845–000.
Applicants: Bishop Hill Interconnection LLC.
Description: Common Facilities Agreement and Requests for Waivers & Blanket Authorization to be effective 1/20/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5050.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–846–000.
Applicants: Bishop Hill Energy II LLC.
Description: Common Facilities Agreement and Requests for Waivers & Blanket Authorization to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5051.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–847–000.
Applicants: Bishop Hill Energy LLC.
Description: Amended and Restated Assignment, Co-Tenancy and Shared Facilities Agreement to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5052.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–848–000.
Applicants: Bishop Hill Energy II LLC
Description: Notice of Cancellation of Assignment, Co-Tenancy and Shared Facilities Agreement to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5053.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–849–000.
Applicants: Bishop Hill Energy III LLC.
Description: Notice of Cancellation of Assignment, Co-Tenancy and Shared Facilities Agreement to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5054.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–850–000.
Applicants: Bishop Hill Interconnection LLC.

Description: Amended and Restated Assignment, Co-Tenancy and Shared Facilities Agreement to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5055.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–851–000.
Applicants: The Detroit Edison Company.
Description: Electric Rate Schedule No. 43 revisions per MOU to be effective 1/21/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5077.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–852–000.
Applicants: Southern California Edison Company.
Description: Amendment to IFA and Svc Agmt with FPL Energy Green Power Wind, LLC to be effective 1/21/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5097.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–853–000.
Applicants: Gratiot County Wind LLC.
Description: Amendment to Co-Tenancy and Shared Facilities Agreement to be effective 1/21/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5132.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–854–000.
Applicants: Gratiot County Wind II LLC.
Description: Amendment to Co-Tenancy and Shared Facilities Agreement to be effective 1/21/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5137.
Comments Due: 5 p.m. ET 2/10/12.

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 20, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1898 Filed 1–27–12; 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: EC12–55–000.
Applicants: ConocoPhillips Company.
Description: Amendment to Section 203 Application of ConocoPhillips Company.
Filed Date: 1/20/12.
Accession Number: 20120120–5259.
Comments Due: 5 p.m. ET 1/30/12.

Docket Numbers: EC12–62–000.
Applicants: La Paloma Generating Company, LLC, Merrill Lynch Credit Products, LLC.
Description: Application for Order Authorizing Disposition of Jurisdictional Facilities under section 203 of The Federal Power Act and Request for Waivers and Expedited Action of Merrill Lynch Credit Products, LLC and La Paloma Generating Company, LLC.
Filed Date: 1/20/12.
Accession Number: 20120120–5257.
Comments Due: 5 p.m. ET 2/10/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–25–000.
Applicants: Tenaska Washington Partners, LP.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Tenaska Washington Partners, LP.
Filed Date: 1/20/12.
Accession Number: 20120120–5173.
Comments Due: 5 p.m. ET 2/10/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2026–000.
Applicants: Pacific Gas and Electric Company.
Description: TO13 Compliance Electric Refund Report to be effective N/A.
Filed Date: 1/20/12.
Accession Number: 20120120–5160.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER10–3286–003; ER10–3299–002.
Applicants: Millennium Power Partners, LP, New Athens Generating Company, LLC.
Description: Additional Supplement to Updated Market Power Analysis of Millennium Power Partners, LP, et al.
Filed Date: 1/20/12.
Accession Number: 20120120–5258.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–551–001.
Applicants: Westar Energy, Inc.
Description: Amendment to Compliance Filing, Schedule 3A, Generator Regulation & Frequency to be effective 12/25/2011.
Filed Date: 1/18/12.
Accession Number: 20120118–5131.
Comments Due: 5 p.m. ET 2/8/12.

Docket Numbers: ER12–855–000.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 95 Amended & Restated Navajo Project Co-Tenancy Agreement to be effective 3/20/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5179.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–856–000.
Applicants: Nevada Power Company.
Description: Rate Schedule No. 96 Navajo Project Western Transmission System Operating Agreement to be effective 3/20/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5185.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–857–000.
Applicants: Pacific Gas and Electric Company.
Description: PWRPA 3rd Amendment to Appendix B to IA and WDT Service Agreement to be effective 12/31/9998.
Filed Date: 1/20/12.
Accession Number: 20120120–5192.
Comments Due: 5 p.m. ET 2/10/12.

Docket Numbers: ER12–858–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Modifications to Joint Agreements, Rate Schedules No. 211, 212, 242, and 243 to be effective 3/21/2012.
Filed Date: 1/20/12.
Accession Number: 20120120–5239.
Comments Due: 5 p.m. ET 2/10/12.

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 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–1899 Filed 1–27–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R4–SFUND 2012-; FRL–9624–1]

Ecusta Mill Site, Pisgah Forest, Transylvania County, NC; Notice of Amended Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of amended settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has amended a settlement for resolution of past response and future costs concerning the Ecusta Mill Superfund Site located in Pisgah Forest, Transylvania County, North Carolina.

DATES: The Agency will consider public comments on the settlement until February 29, 2012. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name Ecusta Mill Superfund Site by one of the following methods:

- *www.epa.gov/region4/waste/sf/enforce.htm.*
- *Email. Painter.Paula@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: December 16, 2011.

Anita L. Davis,

Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2012–1940 Filed 1–27–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before March 30, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

OMB Control Number: 3060–0636.

Title: Sections 2.906, 2.909, 2.1071, 2.1075, 2.1076, 2.1077 and 15.37, Equipment Authorizations—Declaration of Conformity.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,000 respondents; 10,000 responses.

Estimated Time per Response: 9.5 hours (average).

Frequency of Response: One-time reporting requirement, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(r), 304 and 307.

Total Annual Burden: 95,000 hours.

Total Annual Cost: $17,500,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension, there is no change in the reporting, recordkeeping and/or third party disclosure requirements. There is no change in the estimated respondents/responses, burden hours and/or annual costs.

In 1996, the Declaration of Conformity (DoC) procedure was established in a Report and Order, FCC 96–208, *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices.*

(a) The Declaration of Conformity equipment authorization procedure, 47 CFR 2.1071, requires that a manufacturers or equipment supplier test a product to ensue compliance with technical standards that limit radio frequency emissions.

(b) Additionally, the manufacturer or supplier must also include a DoC (with the standards) in the literature furnished with the equipment, and the equipment manufacturer or supplier must also make this statement of conformity and supporting technical data available to the FCC, at the Commission's request.

(c) The DoC procedure represents a simplified filing and reporting procedure for authorizing equipment for marketing.

(d) Finally, testing and documentation of compliance are needed to control potential interference to radio communications. The data gathering are necessary for investigating complaints

of harmful interference or for verifying the manufacturer's compliance with the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–1930 Filed 1–27–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Notice of Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, February 2, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of January 19, 2012
Draft Advisory Opinion 2011–24: Louder Solutions, LLC, d/b/a StandLouder.com
Draft Advisory Opinion 2011–27: New Mexico Voices for Children
Draft Advisory Opinion 2011–28: Western Representation PAC
Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shawn Woodhead Werth, Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary of the Commission.

[FR Doc. 2012–2047 Filed 1–26–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 13, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Lindley C. Stuart, Shattuck, Oklahoma, and Dusti D. Kuehne, Southlake, Texas,* to become part of the Stuart Family Group acting in concert; to acquire control of Shattuck Bancshares, Inc., and thereby indirectly acquire The Shattuck National Bank, both in Shattuck, Oklahoma.

Board of Governors of the Federal Reserve System, January 24, 2012.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 2012–1827 Filed 1–27–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 14, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Patricia I. Walsh Trust, Patricia I. Walsh as trustee, and Mark J. Walsh, both of River Forest, Illinois; Richard A. Walsh, La Grange, Illinois; Katherine Walsh Hennessy, and Patrick M. Walsh, both of Chicago, Illinois; Anne E. Walsh, and Brian J. Walsh, both of Forest Park, Illinois;* together as a group acting in concert, to acquire voting shares of Rush-Oak Corporation, and thereby indirectly acquire voting shares of Oak Bank, both in Chicago, Illinois.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Bryan Bruns,* Annandale, Minnesota; to acquire voting shares of Lake Central Financial, Inc., and thereby indirectly acquire voting shares of Annandale State Bank, both in Annandale, Minnesota.

In addition, Dwight and Leonetta Bruns, Dean and Cheryl Bruns, and Ricky and Renee Walberg, all of Annandale, Minnesota, have applied to acquire voting shares and thereby join the Bruns Family Group, a group acting in concert, which controls Lake Central Financial, Inc., Annandale, Minnesota.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Paul E. Nielsen and Patricia I. Nielsen Revocable Trust, and Patricia I. Nielsen, trustee,* all of Albuquerque, New Mexico; to retain control of Alamosa Bancorporation, Ltd., and thereby indirectly retain control of Alamosa State Bank, both in Alamosa, Colorado.

Board of Governors of the Federal Reserve System, January 25, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–1926 Filed 1–27–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 14, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Bank of China Limited,* Beijing, China; to engage *de novo* through its newly formed subsidiary BOCI Commodities & Futures (USA) LLC, New York, New York, in acting as a futures commission merchant pursuant to section 225.28(b)(7)(iv) of Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–1927 Filed 1–27–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0335]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, email your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above email address within 60 days.

Proposed Project: Trends in U.S. Public Awareness of Racial and Ethnic Health Disparities (1999–2015)—Extension–OMB# 0990–0335—Office of Minority Health (OMH).

Abstract: The proposed survey seeks to collect data for one of OMH's annual performance measures, approved by the Office of Management and Budget (OMB) in February 2007, following OMB's examination of OMH using the Program Assessment Rating Tool (PART). This measure is to ''increase awareness of racial/ethnic health status and health care disparities in the general population.'' Findings from this data collection will enable OMH to track progress on this measure over time as necessitated by current OMB-approved program assessment requirements.

The lack of general awareness and understanding about the nature and extent of racial and ethnic health disparities in the U.S. and the impact that such disparities are having on the overall health of the Nation have been cited as a major barrier to the provision of programmatic, budgetary, and policy attention to these issues. Therefore, one of the long-term, annual measures agreed upon was to ''increase awareness of racial/ethnic health status and health care disparities in the general population.''

Additionally, OMH can use the findings about progress made in *raising awareness* to identify collaborative partners in the federal government, at the state and local levels, among businesses and non-profits, and among the faith community, in order to reach a wider audience. Further, these results can be used by program decision-makers and policy-makers, within and outside of HHS, who are interested in capturing progress made over time as HHS disseminates information to the U.S. population that confirms the existence, and societal effects, of racial and ethnic health disparities.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents*	Number responses per respondent	Average burden per response (in hours)	Total burden hours
General Population	3,159	1	14/60	737
Physician	340	1	14/60	79
Total				816

*Based on actual completion rates from the 2010 OMH/NORC survey.

Keith A. Tucker,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2012–1879 Filed 1–27–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (CPSTF). The Task Force—an independent, nonfederal body of nationally known leaders in public health practice, policy, and research who are appointed by the CDC Director—was convened in 1996 by the

Department of Health and Human Services (HHS) to assess the effectiveness of community, environmental, population, and healthcare system interventions in public health and health promotion. During this meeting, the Task Force will consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Wednesday, February 22, 2012 from 8:30 a.m. to 5:30 p.m., EST and Thursday, February 23, 2012 from 8:30 a.m. to 1 p.m. EST.

Logistics: The Task Force Meeting will be held at the Emory Conference Center at 1615 Clifton Road, Atlanta, GA 30329. Information regarding logistics will be available on the Community Guide Web site (*www.thecommunityguide.org*), Wednesday, January 25, 2012.

FOR FURTHER INFORMATION CONTACT: Allyson Brown, The Community Guide Branch, Epidemiology and Analysis Program Office, Office of Surveillance, Epidemiology, and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road, MS–E–69, Atlanta, Georgia 30333, phone: (404) 498–0937), email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue recommendations and findings to help inform decision making about policy, practice, and research in a wide range of U.S. settings.

Matters to be discussed: Matters to be discussed: Updates on Tobacco, Skin Cancer, Cardiovascular Disease, Mental Health, and Alcohol.

Meeting Accessibility: This meeting is open to the public, limited only by space availability.

Dated: January 17, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–1904 Filed 1–27–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76 FR 50223–24, dated August 12, 2011) is amended to reflect the reorganization of National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Office of Infectious Diseases, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title and functional statements for the Division of Viral Hepatitis (CVJH), insert the following:

Division of Adolescent and School Health (CVJJ). (1) In cooperation with other CDC components, administers programs addressing priority sexual health risks and related health behaviors among youth; (2) identifies and monitors priority sexual health risks and related health behaviors among youth that result in the transmission of HIV/AIDS, other sexually transmitted infections and unintended pregnancy; (3) provides consultation, training, educational, and other technical services to assist state, territorial, and local education and health departments, tribal governments, national nongovernmental organizations, and other societal institutions to implement and evaluate policy, systems, and environmental changes and interventions to reduce priority sexual health risks among youth; (4) in coordination with other CDC components, supports international, national, state, tribal, and local school-based surveillance systems to monitor priority health risk behaviors and health outcomes among youth, along with the policies, programs, and practices schools implement to address them; (5) conducts evaluation research to expand knowledge of the determinants of priority health risk behaviors among youth and to identify effective policies and practices that schools and other societal institutions can implement to reduce priority health risks among youth; (6) develops and disseminates guidelines and tools to help schools and other societal institutions apply research synthesis findings to reduce priority health risks among youth; (7) provides leadership and consultation on the use of a coordinated approach to school health; (8) provides leadership and consultation to other divisions within NCHHSTP and CDC on how schools work and how to foster effective collaboration between public health and education departments; (9) provides information to the scientific community and the general public through publications and presentations; and (10) in accomplishing the functions listed above, collaborates with other components of CDC and HHS; the U.S. Department of Education and other federal agencies; national professional, voluntary, and philanthropic organizations; international agencies; and other societal institutions as appropriate.

Office of the Director (CVJJ1). (1) Plans, directs, and evaluates the activities of the division; (2) provides national leadership and guidance in policy formulation and program planning and development to reduce sexual health risks among youth and improve school health programs, policies, and practices; (3) provides leadership and guidance for program management and operations; (4) provides leadership in coordinating activities between the division and other NCHHSTP divisions in addressing priority sexual health risks among adolescents; (5) promotes collaboration with other NCHHSTP divisions and other governmental and non-governmental organizations for the development of policies and evaluation methods; (6) coordinates division responses to inquiries from national and local communications media; (7) implements science and evidence-based communication programs, initiatives, and strategies that target state and local health and education partners, media, national organizations, and consumers; (8) systematically translates, promotes, and disseminates science-based messages through multiple communication products and channels; (9) implements effective internal communication strategies targeting the Division of Adolescent and School Health (DASH) and other CDC staff; (10) oversees creation, production, promotion, and dissemination of materials designed for use by the media, partners, national organizations, and consumers, including press releases, brochures, fact sheets, toolkits, other print and electronic materials, and ensures appropriate clearance of these materials; (11) assists in the preparation

of speeches and congressional testimony for the division director, the center director, and other public health officials; (12) provides program services support in extramural programs management; and (13) collaborates, as appropriate, with other divisions and offices of NCHHSTP, other CIOs throughout CDC, and other federal agencies in carrying out these activities.

Program Development and Services Branch (CVJJB). (1) Provides consultation, training, educational, and other technical services to assist state, territorial, and local education and health departments, tribal governments, national nongovernmental organizations, and other societal institutions to implement and improve policy, systems, and environmental changes and interventions to reduce priority sexual health risks among youth; (2) uses the results of surveillance and evaluation research and research syntheses to improve the impact of school- and community-based interventions designed to reduce priority health risks among youth and to promote changes in behaviors related to HIV/AIDS, other sexually transmitted diseases, and unintended pregnancy; (3) provides leadership to the nationwide network of leaders in school-based HIV prevention to promote linkages between state and local public health departments with education agencies; (4) assesses training and technical assistance needs and develops strategies to build the capacity of funded partners, other external partners, and division staff, and (5) provides consultation to other divisions within NCHHSTP and CDC on how schools work and how to foster effective collaboration between public health and education departments.

Research Application and Evaluation Branch (CVJJC). (1) Conducts evaluation research to expand knowledge of the determinants of priority health risk behaviors among youth and to identify effective policies and practices that schools and other societal institutions can implement to reduce priority health risks among youth; (2) synthesizes and disseminates research findings to improve the impact of interventions designed to reduce priority sexual health risks among youth, including those designed to address cross-cutting issues and protective factors; (3) develops and disseminates guidelines and tools to help schools and other societal institutions apply research synthesis findings to reduce priority health risks among youth; and (4) in collaboration with other NCHHSTP divisions and with other governmental and non-governmental organizations, develops and promotes evidence-based policies, practices, and evaluation methods.

School-Based Surveillance Branch (CVJJD). (1) Maintains international, national, state, tribal, and local school-based surveillance systems to identify and monitor priority health risk behaviors and health outcomes among youth; (2) maintains national, state, tribal, and local surveillance systems to monitor school health policies and practices designed to address priority health risk behaviors and health outcomes among youth; (3) designs, develops, and disseminates a wide variety of products describing school-based surveillance data; (4) provides comprehensive technical assistance to state and local education and health agencies, tribal governments, and ministries of health and education in the planning and implementation of school-based surveillance systems; (5) manages extramural funding of school-based surveillance systems; and (6) collaborates with other branches, divisions, and offices in NCHHSTP and other CIOs throughout CDC to accomplish the functions listed above.

Dated: January 11, 2012.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–1817 Filed 1–27–12; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–209]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report (CLIA) and Supporting Regulations in 42 CFR 493.1357, 493.1363, 493.1405, 493.1406, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1462, 493.1469, 493.1483, 493.1489 and 493.1491; *Use:* The information collected on this survey form is used in the administrative pursuit of the Congressionally-mandated program with regard to regulation of laboratories participating in CLIA. The surveyor will provide the laboratory with the CMS–209 form. While the surveyor performs other aspects of the survey, the laboratory will complete the CMS–209 by recording the personnel data needed to support their compliance with the personnel requirements of CLIA. The surveyor will then use this information in choosing a sample of personnel to verify compliance with the personnel requirements. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of the entire laboratory; *Form Number:* CMS–209 (OCN 0938–0151); *Frequency:* Biennially; *Affected Public:* Private Sector; State, Local, or Tribal Governments; and Federal Government; *Number of Respondents:* 20,486; *Total Annual Responses:* 10,243; *Total Annual Hours:* 5,121.50. (For policy questions regarding this collection contact Kathleen Todd at (410) 786–3385. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 29, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS

Desk Officer. Fax Number: (202) 395–6974.

Email: *OIRA_submission@omb.eop.gov*.

Dated: January 24, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–1945 Filed 1–27–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–855I and CMS–855R]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicare Enrollment Application for Physician and Non-Physician Practitioners. *Use:* Health care practitioners who wish to enroll in the Medicare program must complete the CMS 855I enrollment application. It is submitted at the time the applicant first requests a Medicare billing number. The application is used by the Medicare Administrative Contractor (MAC), to collect data to assure the applicant has the necessary professional and/or business credentials to provide the health care services for which they intend to bill Medicare including information that allows the MAC to correctly price, process and pay the applicant's claims. It also gathers information that allows the MAC to ensure that the practitioner is not sanctioned from the Medicare program, or debarred, suspended or excluded from any other Federal agency or program. *Form Number:* CMS–855I (OCN 0938–0685). *Frequency:* Once and Occasionally. *Affected Public:* Private Sector (Business or other for-profit and not-for-profit institutions). *Number of Respondents:* 345,000. *Total Annual Responses:* 345,000. *Total Annual Hours:* 824,000. (For policy questions regarding this collection contact Kimberly McPhillips at (410) 786–5374. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* New collection. *Title of Information Collection:* Medicare Enrollment Application—Reassignment of Medicare Benefits. *Use:* Health care practitioners who wish to reassign their benefits in the Medicare program must complete the CMS 855R enrollment application. It is submitted at the time the physician or non-physician practitioner first requests reassignment of his/her Medicare benefits to a group practice, as well as any subsequent reassignments or terminations of established reassignments as requested by the physician or non-physician practitioner. The application is used by the Medicare Administrative Contractor (MAC) to collect data to assure the applicant has the necessary information that allows the MAC to correctly establish or terminate the reassignment. *Form Number:* CMS–855R (OCN 0938-New). *Frequency:* Occasionally. *Affected Public:* Private Sector (Business or other for-profit and not-for-profit institutions). *Number of Respondents:* 100,000. *Total Annual Responses:* 100,000. *Total Annual Hours:* 50,000. (For policy questions regarding this collection contact Kimberly McPhillips at (410) 786–5374. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office at (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *March 30, 2012:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 24, 2012.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–1951 Filed 1–27–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9970–NC]

Request for Information Regarding the Reinsurance Program Under the Affordable Care Act

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This notice is a request for information (RFI) to gain market information on entities that could administer a transitional reinsurance program. This RFI will inform one or more future Requests for Proposals (RFP). This RFI solicits information about entities that could function as a reinsurance entity for the transitional reinsurance program. CMS or one or more States may contract for services required to fulfill the statutory and regulatory requirements of the reinsurance entity.

DATES: Submit written or electronic comments by February 29, 2012.

ADDRESSES: In responding, please refer to file code CMS–9970–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit responses in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation

to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9970–NC, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9970–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Milan Shah, (301) 492–4427.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–(800) 743–3951.

We note that responses to this RFI are not offers, and cannot be accepted by the Government to form a binding contract or to issue a grant. The purpose of this RFI is to inform one or more Requests for Proposals, not to gather public comments on the proposed rules for reinsurance, risk corridors, or risk adjustment under the Affordable Care Act. Those comments have been collected and are being evaluated separately. Information obtained in response to this RFI may be used by the Government for program planning and development, or other purposes with or without attribution. Do not include any information that might be considered proprietary or confidential.

I. Background

Section 1341 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010) (the Affordable Care Act), provides that each State must establish a transitional reinsurance program to help stabilize premiums for coverage in the individual market during the first three years of Exchange operation (2014–2016). The reinsurance program, which is a State-based program, will reduce the uncertainty of insurance risk in the individual market by making payments for high-cost cases. This program will stabilize individual market rate increases that might otherwise occur because of the immediate enrollment of individuals with unknown health status, potentially including, at the State's discretion, those currently in State high-risk pools. CMS published proposed rules for States and health insurance issuers for this reinsurance program on July 15, 2011 (76 FR 41930).

The Affordable Care Act instructs each State to establish or contract with an entity to carry out the reinsurance program. Section 1321(c)(1) of the Affordable Care Act directs the Secretary to take such actions as are necessary to implement the reinsurance program in a State if a State has not taken action necessary to do so. The reinsurance entity, whether operating under contract with a State or CMS, must be a not-for-profit organization with a tax-exempt status.

II. Request for Information

This RFI seeks comment on the entities that could carry out the transitional reinsurance program. CMS may enter into one or more contracts to fulfill the statutory and regulatory requirements of the transitional reinsurance program established under section 1341 of the Affordable Care Act depending on the workload and number of States that would require assistance. In such a case, the contractor may be tasked with one or more of the following functions:

- Collecting reinsurance contributions;
- Accepting and validating requests for reinsurance payments;
- Remitting reinsurance payments;
- Reconciling and verifying reinsurance contributions and payments;
- Maintaining records; and,
- Providing customer support to issuers.

CMS is seeking to engage formally, in a transparent and participatory manner, with entities that understand the reinsurance market, and would be able to perform the responsibilities of a reinsurance entity under the statute and associated regulations. In carrying out the transitional reinsurance program, CMS seeks to mitigate conflicts of interest (COIs) that may arise if potential market competitors operate the reinsurance program. As such, we request any information on potential COIs, and potential avenues for mitigation, from all stakeholders, including issuers and third-party administrators.

Infrastructure

1. Does your organization operate as a not-for-profit reinsurance entity in the State(s) in which you currently conduct business?

2. If your organization operates as a reinsurance entity but does not function as a not-for-profit, what steps would have to be taken to convert the organization or the part of that organization responsible for reinsurance operations into a not-for-profit entity?

What other considerations should be taken into account in connection with such a conversion?

3. What other steps must your organization take in order to be prepared to smoothly transition into a role as administrator of a new temporary reinsurance program?

4. Does your organization operate nationally or in limited geographic areas? If the latter, what are the geographic areas?

5. Would your organization be able and willing to contract with a State and/or the Federal government to operate a temporary reinsurance program?

6. Are there any State and/or local licensing requirements that must be considered by an organization operating as such a reinsurance entity?

7. What potential conflicts of interest (COIs) could arise if your organization were to operate such a reinsurance program as a not-for-profit entity? How might these COIs be mitigated?

8. For organizations that do not currently have COI mitigation programs, what steps would have to be taken to develop and execute such a program?

9. What is a reasonable amount of time for your organization to become fully operational (for example, have all systems in place to operate a reinsurance program) after the date of a contract award? What resources would be necessary?

Collection and Disbursement of Reinsurance Funds

10. Describe your organization's ability to perform the following functions:

- Collecting reinsurance contributions;
- Accepting and validating requests for reinsurance payments;
- Remitting reinsurance payments; and,
- Reconciling and verifying reinsurance contributions and payments.

11. What services related to the collection of reinsurance contributions, or disbursement of reinsurance payments to another entity would your organization need to subcontract due to a lack of capacity, expertise, or experience?

12. What COIs could arise for such potential subcontractors?

Data Collection

13. Describe current data systems that are used by your organization, including any standards, security systems, and web-based interactive structure. Are your systems compliant or have the capability of being Section 508 compliant (*http://www.section508.gov/*)?

14. Do your organization's current data systems have the capability to interface with external systems to accept data and reports? If yes, what types of interfaces are currently in place?

15. What data are currently collected by your organization related to medical costs?

16. What is your organization's current capacity for collecting and verifying claims submissions from issuers? What processes does your organization have in place to ensure confidentiality and security protections of patient information?

17. In what formats does your organization currently collect data? Can your organization support other formats? If so, which ones?

18. Would your organization need to subcontract any services related to data collection?

19. What COIs could arise for such subcontractors?

Customer Support

20. What telecommunication and technical support systems does your organization currently maintain for health insurance issuers or other commercial clients (for example, Web sites, 24-hour hotlines, helpdesk)?

21. Are your support systems compliant or have the capability of being Section 508 compliant (*http://www.section508.gov/*)?

22. Would your organization need to subcontract any services related to data collection?

23. What COIs could arise for such subcontractors?

Evaluation

24. Does your organization currently conduct evaluations of operations and activities? Do such evaluations include a financial assessment of your organization's activities?

25. What are your organization's current financial and data reconciliation processes?

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: January 20, 2012.

Charles Littleton,

Contracting Officer, Office of Acquisition and Grants Management, Centers for Medicare and Medicaid Services.

[FR Doc. 2012–1944 Filed 1–27–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Pulmonary-Allergy Drugs 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). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs 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 23, 2012, from 8:30 a.m. to 5 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.

Contact Person: Nicole Vesely, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, (301) 796–9001, Fax: (301) 847–8533, email: *PADAC@fda.hhs.gov,* 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: The committee will discuss new drug application 202450, for aclidinium bromide, sponsored by Forest Laboratories, for the proposed

indication of long-term maintenance treatment of bronchospasm associated with chronic obstructive pulmonary disease, including chronic bronchitis and emphysema.

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: 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 8, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. 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 January 31, 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 1, 2012.

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 Nicole Vesely 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 24, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1889 Filed 1–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Blood 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). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

DATES: *Date and Time:* The meeting will be held on February 29, 2012, from 8:30 a.m. to 4 p.m.

Location: Hilton Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877, (301) 977–8900. For those unable to attend in person, the meeting will also be Web cast. The Blood Products Advisory Committee Web cast will be available at *http://fda.yorkcast.com/webcast/Viewer/?peid=11253ea88a9041e5a91883236f342bfc1d.*

Contact Person: Bryan Emery or Pearl Muckelvene, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, (301) 827–1281, 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 29, 2012, the committee will discuss the evaluation of possible new plasma products manufactured following storage at room temperature for up to 24 hours, namely, plasma for transfusion prepared from whole blood held at room temperature for up to 24 hours prior to separation and freezing, or from apheresis plasma held at room temperature for up to 24 hours before freezing. In the afternoon, the committee will hear the following updates: Report from the Health and Human Services Advisory Committee on Blood Safety and Availability and summary of the December 5–6, 2011, meeting; update on HHS activities related to the evaluation of the donor deferral policy for men who have had sex with other men; summary of the November 8–9, 2011, public workshop on hemoglobin standard and maintaining an adequate blood supply; summary of the November 29, 2011, public workshop on data and data needs to advance risk assessment for emerging infectious diseases for blood and blood products; and an update on thrombotic adverse events and immune globulin products.

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: 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 11:15 a.m. and 12:45 p.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.

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 Bryan Emery or Pearl Muckelvene 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 24, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1888 Filed 1–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Annual Computational Science Symposium; Public Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA), in cosponsorship with the Pharmaceutical Users Software Exchange (PhUSE), is announcing a public conference entitled ''The FDA/PhUSE Annual Computational Science Symposium.'' The purpose of the conference is to help the broader community align and share experiences to advance computational science. At the conference, which will bring together FDA, industry, and academia, FDA will update participants on current initiatives, and collaborative working groups will address specific challenges in accessing and reviewing data to support product development. These working groups will focus on solutions and practical ways to implement them.

DATES: *Date and Time:* The public conference will be held on March 19 and 20, 2012, from 9 a.m. to 4:30 p.m.

Location: The public conference will be held at the Silver Spring Civic Building at Veterans Plaza, One Veterans Pl., Silver Spring, MD 20910, 1–(240)–777–5300.

Contact: Chris Decker, U.S. Regional Director, Pharmaceutical Users Software Exchange (PhUSE), 64 High St., BROADSTAIRS CT10 1JT, United Kingdom, (202) 386–6722, e-mail: *office@phuse.eu.*

SUPPLEMENTARY INFORMATION:

I. Working Groups and Their Areas of Focus

Six working groups will address particular challenges related to the access and review of data to support product development:

- Working Group 1: Data Validation and Quality Assessment,
- Working Group 2: Reducing Risk Within the Inspection Site Selection Process,
- Working Group 3: Challenges of Integrating and Converting Data Across Studies,
- Working Group 4: Standards Implementation Issues With the Clinical Data Interchange Standards Consortium Data Models,
- Working Group 5: Development of Standard Scripts for Analysis and Programming, and
- Working Group 6: ''Non-Clinical Road-Map'' and Impacts on Implementation.

A description of the planned activities of the working groups can be found at *http://www.phuse.eu/Working-Groups.aspx.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

II. Registration and Accommodations

A. Registration

To register, please submit the registration form online at *https://www.phuse.eu/PhUSE-Conference-2012-Registration.aspx.* Registration fees cover the cost of facilities, materials, and food functions. Seats are limited, and conference space will be filled in the order in which registrations are received. Onsite registration will be available to the extent that space is available on the day of the conference. The costs of registration for different categories of attendee are as follows:

COST OF REGISTRATION

Category	Cost
Industry representatives registering by January 15, 2012	$750
Industry representatives registering after January 15, 2012	950
Those with Government affiliation	300
Representatives of nonprofit organizations	600
Those attending for a single day	650

Government and nonprofit attendees and exhibitors will need an invitation code to register at the discounted rate. An invitation code can be obtained by sending an email to: *office@phuse.eu.* All registrants will pay a fee with the exception of a limited number of speakers/organizers who will have a complimentary registration.

B. Accommodations

Attendees are responsible for their own accommodations. Attendees making reservations at the Courtyard by Marriott Silver Spring Downtown Hotel are eligible for a reduced conference rate of $199, not including applicable taxes. Those making reservations online should use the group code ''SPRSPRB'' to receive the special rate. If you need special accommodations because of disability, please contact Chris Decker (see *Contact*) at least 7 days before the meeting.

III. Posters and Exhibits Information

Posters will be presented and may include demonstrations to provide an interactive experience. Although PhUSE welcomes demonstrations to support and explore the posters that are presented, neither PhUSE nor FDA endorse any commercial software or vendor. The creator of what is judged the best poster will be recognized and offered the opportunity to present the poster at the closing session.

Poster topics include:

- Data submission standards development, implementation, and best practices;
- User experience and evaluation of current processes and tools and their effects on organizational performance;
- Needs and specifications for proposed new tools and processes;
- Business processes driving the development of information systems; and
- The effect of processes and tools on problem solving quality, efficiency, and cost.

Those interested in more information should refer to the PhUSE Web site at *http://www.phuse.eu/ssc4p.aspxweb.*

The conference will make available an exhibition hall. The exhibitor price for this conference is $3,500.

Dated: January 24, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–1887 Filed 1–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Revision to Proposed Collection; Comment Request; National Institute of Child Health and Human Development; the National Children's Study, Vanguard (Pilot) Study

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 Child Health and Human Development (NICHD), 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.

Proposed Collection

Title: The National Children's Study, Vanguard (Pilot) Study.

Type of Information Collection Request: Revision.

Need and Use of Information Collection: The purpose of the proposed methodological study is to continue the Vanguard phase of the National Children's Study with updated instruments and additional biospecimen collections and physical measures and to evaluate the feasibility, acceptability, and cost of a different sampling strategy for enrollment of pregnant women. This study is one component of a larger group of studies being conducted during the Vanguard Phase of the National Children's Study (NCS), a prospective, national longitudinal study of child health and development. In combination, these studies will be used to inform the design of the Main Study of the National Children's Study.

Background

The National Children's Study is a prospective, national longitudinal study of the interaction between environment, genetics on child health and development. The Study defines ''environment'' broadly, taking a number of natural and man-made environmental, biological, genetic, and psychosocial factors into account. Findings from the Study will be made available as the research progresses, making potential benefits known to the public as soon as possible.

The National Children's Study (NCS) has several components, including a pilot or Vanguard Study, and a Main Study to collect exposure and outcome data. The sample frame for the NCS Vanguard and Main Study was initially based on a national probability sample using geography as the basis and selecting about100 of the about 3000 counties in the United States as the basis for Primary Sampling Units. Within the Primary Sampling Units, smaller geographic segments were selected as Secondary Sampling Units in an attempt to normalize live birth rates per area sampled. Women who resided at the time of enrollment within a designated Secondary Sampling Unit and were either pregnant or between 18 and 49 were eligible for enrollment. The initial recruitment technique within the selected geographic areas was household contact by field workers going door to door.

The Vanguard Study was launched in January 2009, and by summer 2009, field experience suggested that the household contact recruitment strategy was not feasible with available resources. Thus, in 2010 new recruitment strategies were launched to evaluate options. By late 2011, the NCS had sufficient data to evaluate operational aspects of various recruitment strategies. Preliminary analyses suggested that a provider based recruitment strategy was the most efficient, but due to constrictions of the geographic sampling frame, the potential of the strategy was limited. Specifically, many women had to be screened at a particular provider to locate the relatively few who resided in a designated segment. Anticipating this limitation, the NCS Program Office developed and discussed with the NCS Advisory Committee a different sampling frame, using provider location. This new sampling strategy is termed Provider Based Sampling (PBS). Information from this data collection is critical to determine the plausibility of a provider based sampling frame as an option for some parts of the NCS Main Study.

Research Questions

Two research goals will be accomplished by this information collection. The first goal is to systematically pilot additional study visit measures and collections whose scientific robustness, burden to participants and study infrastructure, and cost for use in the Vanguard (Pilot) Study and to inform the Main Study. The second goal is to test the feasibility, acceptability, and cost of Provider Based Sampling using three locations.

Methods

We will continue with the current data collection schedule which include pre-pregnancy, pregnancy, and birth periods, as well as postnatal data collection points at 3, 6, 9, 12, 18, and 24 months of age. We propose to add or modify the selected measures below to address analytic goals of assessing feasibility, acceptability and cost of specific study visit measures.

Supplemental Information and Biospecimen Collections

Core Questionnaire: We propose to pilot use of a core questionnaire containing key variables and designed to collect core data at every study visit contact from the time that the enrolled child is 6 months of age to the time the child is 5 years of age.

30-Month Data Collection Module: We propose piloting the approach of use of a core instrument plus an age specific module with the 30 month visit.

Validation Questions for 18, 24 and 30 month: We propose addition of brief, telephone-based questions that would be fielded to a random sample of each interviewer's cases after completion of the 18-Month, 24-Month, and 30-Month interviews to monitor interviewer performance and identify occurrences of data falsification.

Nonrespondent Questionnaire will collect information on why a participant chose to not enroll or withdraw from the NCS. This information may be used to revise our approaches to recruitment and will help the Study frame other systematic analyses of nonresponse bias.

Physical Measures: The addition of 6 month and 12 month infant measures of child anthropometry and blood pressure may provide critical pieces of information for future research on the causes of obesity, diabetes, premature puberty and a host of other health outcomes.

Revised Father Questionnaire: The NCS seeks to incorporate behavioral, emotional, educational and contextual consequences to enable a complete assessment of psychosocial influences on children's well-being. The Revised Father Questionnaire now includes measures addressing key social/personal resources and fathers' capacity, desire and attitudes towards engaging with mothers and children.

Revised 24 Month Interview: The Modified Checklist for Autism in toddlers (M–CHAT™) is a validated brief screening measure for identification of Autism and will be added to the 24 month interview.

Breast Milk Collection 1 and 3 months: Additional collections are needed to determine the feasibility, acceptability and cost of collection.

Infant Urine Collection at 6 and 12 months: Additional collections are needed to determine the feasibility, acceptability and cost of collection.

Infant Blood and Saliva Collection at 12 months: Additional collections are needed to determine the feasibility, acceptability and cost of collection.

Provider Based Sampling

We will compile, at three Vanguard Study locations, a list of prenatal providers serving women who reside in the Primary Sampling Unit. Providers will be asked to complete a brief questionnaire about their practice and their patient demographics. For this pilot, a woman will be eligible for recruitment if she resides in the Primary Sampling Unit and is seeing a provider for her first prenatal visit.

Recruitment of participants at the selected provider offices will follow the protocol and procedures developed for the Provider-Based Sample Recruitment Substudy, as previously approved by the Office of Information and Regulatory Affairs within the Office of Management and Budget. Potential participants will be screened on age eligibility, residence in the sampled Primary Sampling Unit, and status of an initial prenatal visit. In some locations, medical records may be prescreened to identify participants meeting these eligibility criteria.

Frequency of Response: See above descriptions.

Affected Public: Healthcare Providers, Age-eligible women, Pregnant women, Fathers, and their children.

Annual Reporting Burden: See Table 1. The additional annualized cost to respondents over the 3 year data collection period is estimated at annualized cost of $1,966,069 (based on $10 per hour). This is calculated as estimating 415,894 respondent contacts at an estimated average of 0.47 hours per contact, for a total estimated annual respondent burden as 196,607 hours. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR RECRUITMENT SUBSTUDY RESPONDENTS, PRENATAL TO 30 MONTHS, PHASE 2

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Pregnancy Screener (PB, EH, TT–HI)	Age-Eligible Women	68,538	1	0.42	28,558
Provider Based Sampling Eligibility Screener (PBS).	Age-Eligible Women	9,375	1	0.25	2,344
Healthcare Provider Questionnaire (PB)	Healthcare Providers	600	1	0.17	100
Provider Based Sampling Frame Questionnaire (PBS).	Healthcare Providers	1,225	1	0.17	204
Household Enumeration Instrument (EH)	HH Reporters	120,000	1	0.33	40,000
Low-intensity Invitation to High-intensity Script (TT–HI).	Age-Eligible Women	15,840	1	0.25	3,960
Pregnancy Screener (TT–LI, TT–HI)	Age-Eligible Women	48,000	1	0.35	16,800
Low-Intensity Consent Script (TT–LI)	Age-Eligible Women	28,800	1	0.33	9,600
Nonrespondent Questionnaire (PB, EH, TT–HI, TT–LI, PBS).	Pregnant Women, Non-Pregnant Women, Mothers or Fathers.	3,000	1	0.08	250
Preconception Activities:					
Non-pregnant Women's Informed Consent (PB, EH, TT–HI).	Age-Eligible Women	1,825	1	0.50	913
Pre-Pregnancy Interview (PB, EH, TT–HI)	Age-Eligible Women	1,095	1	0.75	821
Biological and Environmental Sample Collection—Preconception (PB, EH, TT–HI).	Age-Eligible Women	986	1	0.25	246
Pregnancy Probability Group Follow Up Script (PB, EH, TT–HI, TT–LI).	Age-Eligible Women	11,152	6	0.10	6,691
Low-intensity Questionnaire (Non-Pregnant) (TT–LI).	Age-Eligible Women	10,057	1	0.50	5,029
Validation Script (PB, EH, TT–HI, TT–LI, PBS).	Age-Eligible Women	3,805	1	0.08	304
Pregnancy Activities:					
Pregnant Women's Informed Consent Form (PB, EH, TT–HI, PBS).	Pregnant Women	12,967	1	0.50	6,484
Low-intensity Questionnaire (Found Pregnant) (TT–LI).	Pregnant Women	518	1	0.50	259
Pregnancy Visit 1 Interview (PB, EH, TT–HI, PBS).	Pregnant Women	6,310	1	1.00	6,310
Biological and Environmental Sample Collection—Pregnancy (PB, EH, TT–HI, PBS).	Pregnant Women	10,363	1	0.25	2,591
Pregnancy Visit 2 Interview (PB, EH, TT–HI, PBS).	Pregnant Women	6,190	1	0.75	4,643
Pregnancy Health Care Log (PB, EH, TT–HI, PBS).	Pregnant Women	5,048	1	0.33	1,683
Father Informed Consent Form (PB, EH, TT–HI, PBS).	Alternate Caregiver	5,048	1	0.50	2,524
Father Interview (PB, EH, TT–HI, PBS)	Alternate Caregiver	3,029	1	0.25	757

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR RECRUITMENT SUBSTUDY RESPONDENTS, PRENATAL TO 30 MONTHS, PHASE 2—Continued

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours
Birth-Related Activities:					
Birth Visit Interview (PB, EH, TT–HI, PBS)	Mother/Baby	3,422	1	0.40	1,369
Low-intensity Questionnaire (Birth-focus) (TT–LI).	Mother/Baby	1,296	1	0.50	648
Postnatal Activities:					
Infant Feeding Log (PB, EH, TT–HI, PBS)	Mother/Baby	3,319	1	0.33	1,106
Low-intensity Questionnaire (Child-focus) (TT–LI).	Mother/Baby	1,147	4	0.50	2,295
Biological Sample Collection—Mother/Baby (PB, EH, TT–HI, PBS).	Mother/Baby	11,635	1	1.50	17,452
3-Month Interview (PB, EH, TT–HI, PBS)	Mother/Baby	3,298	1	0.33	1,099
Core Questionnaire (PB, EH, TT–HI, TT–LI, PBS).	Mother/Child	2,911	6	0.30	5,240
6-Month Visit Interview (PB, EH, TT–HI, PBS).	Mother/Baby	3,199	1	0.50	1,599
Physical Measures (6-Month, 12-Month, 24-Month).	Baby/Child	2,677	3	0.50	4,016
9-Month Interview (PB, EH, TT–HI, PBS)	Mother/Baby	3,103	1	0.17	517
12-Month Visit Interview (PB, EH, TT–HI, PBS).	Mother/Baby	3,010	1	0.50	1,505
18-Month Interview (PB, EH, TT–HI, PBS)	Mother/Child	2,859	1	0.50	1,430
24-Month Interview (PB, EH, TT–HI, PBS)	Mother/Child	2,716	1	0.75	2,037
30-Month Visit Interview (PB, EH, TT–HI, TT–LI, PBS).	Mother/Child	2,580	1	0.92	2,365
Formative Research:					
Formative—Developmental					14,542
Grand Total, Alternate Recruitment Substudy.		415,894			182,065
Total, Formative Research					14,542
Grand Total		415,894			196,607

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 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 Jamelle E. Banks, Project Clearance Liaison, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland, 20892, or call non-toll free number (301) 496–1877 or Email your request, including your address to *banksj@mail.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.

Jamelle E. Banks,

Project Clearance Liaison, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2012–1934 Filed 1–27–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: February 22, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Bukhtiar H Shah, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Acute Neural Injury and Epilepsy Study Section.

Date: February 23, 2012.

Time: 7 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–1929 Filed 1–27–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conferences and Scientific Meetings with an Environmental Health Focus.

Date: February 23, 2012.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, Keystone Building, 530 Davis Drive, Room 2128, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B Allen, Ph.D., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–1932 Filed 1–27–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–1098]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee. This Committee advises the Secretary of the Department of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

DATES: Applicants should submit a cover letter and resume in time to reach the Alternate Designated Federal Officer (ADFO) on or before March 30, 2012.

ADDRESSES: Applicants should send their cover letter and resume to the following address: Commandant (CG–5222), Attn: Vessel and Facility Operations Standards, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126; or by calling (202) 372–1386; or by faxing (202) 372–1926; or by emailing to *Kevin.Y.Pekarek2@uscg.mil.*

This notice, is available in our online docket, USCG–2011–1098, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Y. Pekarek, Assistant Designated Federal Officer (ADFO) of National Offshore Safety Advisory Committee (NOSAC); telephone (202) 372–1386; fax (202) 372–1926; or email at *Kevin.Y.Pekarek2@uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Offshore Safety Advisory Committee (NOSAC) is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of Title 6 U.S.C. section 451 and advises the Secretary of Homeland Security on matters and actions concerning activities directly involved with or in support of the exploration of offshore mineral and energy resources insofar as they relate to matters within Coast Guard jurisdiction.

The Committee usually meets two times a year, approximately every six months.

We will consider applications for five positions that will become vacant on January 31, 2013.

(a) One member representing employees of companies engaged in offshore operations, who should have recent practical experience on vessels or offshore units involved in the offshore mineral and energy industry;

(b) One member representing Diving Services related to offshore construction, inspection and maintenance;

(c) One member representing the Deepwater Port interests;

(d) One member representing Pipe Laying services related to offshore construction; and,

(e) One member representing the General Public, who will serve as a Special Government Employee (SGE) as defined in 202(a) of Title 18, United States Code. SGE's must submit financial disclosure forms, which are available from the ADFO, upon request.

To be eligible, applicants for positions (a–d) should have expertise and/or knowledge and experience regarding the technology, equipment and techniques that are used or are being developed for use in the exploration for, and the recovery of, offshore mineral resources.

Registered lobbyists are not eligible to serve on federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 104–65, as amended). Each NOSAC Committee member serves a term of office of up to three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary or reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the Coast Guard policy on gender and ethnic nondiscrimination, we encourage

qualified men and women of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Kevin Y. Pekarek, ADFO of NOSAC at Commandant (CG–5222)/NOSAC, U.S. Coast Guard, 2100 Second Street SW., STOP 7126, Washington, DC 20593–7126. Send your cover letter and resume in time for it to be received by the ADFO on or before March 30, 2012.

To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2011–1098) in the Search box, and click ''Go.'' Please do not post your resume on this site.

Dated: January 20, 2012.

J. G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–1878 Filed 1–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0384]

Maritime Security Directive 104–6 (Rev 6); Guidelines for U.S. Vessels Operating in High Risk Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of Availability.

SUMMARY: The Coast Guard announces the release of Maritime Security (MARSEC) Directive 104–6 (Rev 6). This Directive only applies to U.S.-flagged vessels subject to the Maritime Transportation Security Act (MTSA) on international voyages through or in designated high risk waters, and provides additional counter-piracy guidance and mandatory measures for these vessels operating in these areas where acts of piracy and armed robbery against ships are prevalent. MARSEC Directive 104–6 (Rev 6) also includes an annex that provides specific direction for vessels operating around the Horn of Africa. Although MARSEC Directives are designated Sensitive Security Information (SSI) and are not subject to public release, a non-SSI version of this directive is available.

DATES: MARSEC Directive 104–6 (Rev 6) has been available since December 30, 2011. MARSEC Directive 104–6 (Rev 5) is no longer valid after that date.

ADDRESSES: The latest MARSEC Directives are available at your local Captain of the Port (COTP) office. Phone numbers and addresses for your local COTP office can be found in the Port Directory at *http://homeport.uscg.mil.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LCDR James T. Fogle, Office of Vessel Activities, Coast Guard, telephone (202) 372–1038, email *James.T.Fogle@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Somali pirates operate along a 2,300 mile coast and in 2.5 million square miles of ocean. The international community has engaged with local officials in a focused domestic and international anti-piracy effort to address the enforcement difficulties caused by the affected area's size and political complexity. Despite these efforts, piracy persists and the combination of piracy and weak rule of law in the region provides a potential breeding ground for additional transnational threats. Accordingly, the United States uses existing statutory authority to develop security standards designed to protect U.S.-flagged vessels and continues to work with international partners to prevent piracy.

On February 10, 2006, the Coast Guard announced the release of MARSEC Directive 104–6 (71 FR 7054) for those owners and operators of vessels subject to 33 CFR parts 101 and 104. MARSEC Directive 104–6 provides direction to U.S.-flagged vessels operating in high risk areas where acts of piracy and armed robbery against ships are prevalent.

MARSEC Directive 104–6 has been revised five times. MARSEC Directive 104–6 (Rev 1) provided an updated list of high risk waters based on a biennial review of global piracy and terrorism threats.

MARSEC Directive 104–6 (Rev 2) provided additional counter-piracy guidance to U.S.-flagged vessels operating in high risk waters where acts of piracy and armed robbery against ships are prevalent. It also provided a listing of additional high risk waters, updated from the previous version of the Directive.

MARSEC Directive 104–6 (Rev 3) encouraged the use of industry best management practices that have proven to be successful in thwarting pirate attacks and incorporates lessons-learned since the issuance of Revision 2.

MARSEC Directive 104–6 (Rev 4) provided clarification for U.S.-flagged vessels berthed or anchored in high risk waters. Vessels at anchor should operate in a manner consistent with vessels that transit through high risk waters. Whether at anchor or underway, the vessels are subjected to the same type of threats from attacking pirates. Vessels berthed in high risk waters should implement enhanced security measures as required by the MARSEC Directive.

MARSEC Directive 104–6 (Rev 5) addressed the expanding operating area of Somali pirates and provides U.S.-flagged vessels additional guidance for operations in the Indian Ocean.

MARSEC Directive 104–6 (Rev 6), the Directive that is the subject of this notice of availability, provides a revised and updated list of designated high risk waters and areas. MARSEC Directive 104–6 (Rev 5) is no longer valid with the issuance of (Rev 6).

We developed piracy-related Port Security Advisories (PSAs) to provide further guidance and direction to U.S.-flagged vessels operating in high risk waters to help facilitate compliance with MARSEC Directive 104–6 (series). The PSAs can be found at *http://homeport.uscg.mil/piracy,* including a non-SSI version of this MARSEC Directive in PSA (2–09) (Rev 3).

Procedural

COTPs and District Commanders can access all MARSEC directives on Homeport by logging in and going to Missions > Maritime Security > Maritime Transportation Security Act (MTSA) > Policy. Owners and operators of U.S.-flagged vessels that travel on international voyages must contact their local COTP, cognizant District Commander or the Office of Vessel Activities to acquire a copy of MARSEC Directive 104–6 (Rev 6). COTPs or cognizant District Commanders may provide this MARSEC Directive to appropriate vessel owners and operators via mail or fax in accordance with SSI handling procedures.

Pursuant to 33 CFR 101.405, we consulted with the Department of State, Office of the Secretary of Defense, Joint Chiefs of Staff, Department of Transportation/Maritime Administration, Office of Naval Intelligence, Department of Commerce, Department of Justice, Military Sealift Command, Global Maritime Situational Awareness, Overseas Security Advisory Council, United States Agency for International Development, Naval Criminal Investigative Service, Customs and Border Protection, Transportation Security Administration, U.S. Africa Command, U.S. Central Command, and

U.S. Transportation Command prior to issuing these Directives.

All MARSEC Directives issued pursuant to 33 CFR 101.405 are marked as SSI in accordance with 49 CFR Part 1520. COTPs and District Commanders will require individuals requesting a MARSEC Directive to prove that they meet the standards for a ''covered person'' under 49 CFR 1520.7, have a ''need to know'' the information, as defined in 49 CFR 1520.11, and that they will safeguard the SSI in MARSEC Directive 104–6 (Rev 6) as required in 49 CFR 1520.9.

Dated: January 20, 2012.

Paul F. Thomas, USCG,

Acting Director, Prevention Policy

[FR Doc. 2012–1908 Filed 1–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: USCIS Case Status Online; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: USCIS Case Status Online.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 30, 2012.

During this 60-day period, USCIS will be evaluating whether to revise the USCIS Case Status Online. Should USCIS decide to revise the USCIS Case Status Online we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the USCIS Case Status Online.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the DHS, USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to (202) 272–0997 or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email please add the OMB Control Number 1615–0080 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–(800) 375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* USCIS Case Status Online.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number (File No. OMB–33). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households, for-profit organizations, and not-for-profit organizations. This system allows individuals or their representatives to request case status of their pending application through USCIS' Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000,000 responses at 0.075 hours (4½ minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,500,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, Telephone number (202) 272–8377.

Dated: January 24, 2012.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–1957 Filed 1–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5602–N–01]

Notice of Proposed Information Collection: Comment Request; Production of Material or Provision of Testimony by HUD in Response to Demands in Legal Proceedings Among Private Litigants

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 30, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

FOR FURTHER INFORMATION CONTACT: Allen Villafuerte, Managing Attorney, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10258, Washington, DC 20410–

0500, telephone (202) 708–0300) (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Production of Material or provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants.

OMB Control Number, if applicable: 2501–0022.

Description of the need for the information and proposed use: Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

Agency form numbers, if applicable: None. Please see 24 CFR 15.203.

Members of affected public: All types of entities, private and non-profit organizations, individuals and households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents	Frequency of response	Hours per response	Total burden hours
106	1	1.5	159

Status of the proposed information collection: Reinstatement of collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 20, 2012.

Camille E. Acevedo,

Associate General Counsel for Legislation and Regulations.

[FR Doc. 2012–1928 Filed 1–27–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–EA–2012–N009; FF09D00000–FXGO1664091HCC05D–123]

Wildlife and Hunting Heritage Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting of the Wildlife and Hunting Heritage Conservation Council (Council).

DATES: *Meeting:* Tuesday February 14, 2012, from 8:30 a.m. to 4:30 p.m., and Wednesday February 15, 2012, from 8:30 a.m. to 4:30 p.m. (Eastern standard time). For deadlines and directions on registering to attend, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held in the Secretary's Conference Room at the Department of the Interior, Room 5160, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Joshua Winchell, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2639; fax (703) 358–2548; or email *joshua_winchell@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Wildlife and Hunting Heritage Conservation Council will hold a meeting.

Background

Formed in February 2010, the Council provides advice about wildlife and habitat conservation endeavors that:

1. Benefit recreational hunting;
2. Benefit wildlife resources; and
3. Encourage partnership among the public, the sporting conservation community, the shooting and hunting sports industry, wildlife conservation organizations, the States, Native American tribes, and the Federal Government.

The Council advises the Secretary of the Interior and the Secretary of Agriculture, reporting through the Director, U.S. Fish and Wildlife Service (Service), in consultation with the Director, Bureau of Land Management (BLM); Chief, Forest Service (USFS); Chief, Natural Resources Service (NRCS); and Administrator, Farm Services Agency (FSA). The Council's duties are strictly advisory and consist of, but are not limited to, providing recommendations for:

1. Implementing the Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;
2. Increasing public awareness of and support for the Sport Wildlife Trust Fund;
3. Fostering wildlife and habitat conservation and ethics in hunting and shooting sports recreation;
4. Stimulating sportsmen and women's participation in conservation and management of wildlife and habitat resources through outreach and education;
5. Fostering communication and coordination among State, Tribal, and Federal Government; industry; hunting and shooting sportsmen and women; wildlife and habitat conservation and management organizations; and the public;
6. Providing appropriate access to Federal lands for recreational shooting and hunting;
7. Providing recommendation to improve implementation of Federal conservation programs that benefit wildlife, hunting, and outdoor recreation on private lands; and
8. When requested by the agencies' designated ex officio members or the Designated Federal Officer in consultation with the Council Chairman, performing a variety of assessments or reviews of policies,

programs, and efforts through the Council's designated subcommittees or workgroups.

Background information on the Council is available at *http://www.fws.gov/whhcc.*

Meeting Agenda

The Council will convene to consider:

1. The Recreational Hunting and Wildlife Resource Conservation Plan—A Ten-Year Plan for Implementation;

2. Recreational shooting opportunities on Federal lands;

3. Programs of the Department of the Interior and Department of Agriculture, and their bureaus, that enhance hunting opportunities and support wildlife conservation;

4. America's Great Outdoors; and

5. Other Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/whhcc.*

PUBLIC INPUT

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the meeting	February 6, 2012.
Submit written information or questions before the meeting for the council to consider during the meeting.	February 6, 2012.
Give an oral presentation during the meeting	February 6, 2012.

Attendance

Because entry to Federal buildings is restricted, all visitors are required to preregister to be admitted. In order to attend this meeting, you must register by close of business on the dates listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**. Please submit your name, time of arrival, email address, and phone number to the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. Written statements must be received by the date above, so that the information may be made available to the Council for their consideration prior to this meeting. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this meeting. Nonregistered public speakers will not be considered during the meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the meeting.

Meeting Minutes

Summary minutes of the conference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/whhcc.*

Elizabeth H. Stevens,

Acting Director.

[FR Doc. 2012–1901 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDC00000.L11200000.MR0000.241A.0; 4500030921]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) will meet as indicated below.

DATES: February 22, 2012. The meeting will begin at 9:15 a.m. and end no later than 4 p.m. The public comment period will be held from 11 a.m. to 11:30 a.m. The meeting will be held at the BLM Coeur d'Alene District Office, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Suzanne Endsley, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topic: Bureau of Land Management proposals to increase recreation fees in the Coeur d'Alene Field Office (Recreation RAC Subcommittee), updates from the Cottonwood and Coeur d'Alene Field Offices, presentations on hazardous fuels reduction projects. Additional agenda topics or changes to the agenda will be announced in local press releases. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.html.*

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending upon the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: January 20, 2012.

Gary D. Cooper,

District Manager.

[FR Doc. 2012–1909 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000 L16100000.DP0000.WBSLXSS073H0000; HAG 12–0083]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: March 7, 2012.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. It will begin at 10 a.m. and end at 2 p.m. Members of the public will have an opportunity to address the EWRAC at 10 a.m. The meeting will be held at Big Bend Community College, 7662 N.E. Chanute Street, Moses Lake, Washington, 98837–2950. Discussion will focus on introduction and orientation for new members, the Eastern Washington and San Juan Resource Management Plan, and future Resource Advisory Council business.

FOR FURTHER INFORMATION CONTACT: Robert St. Clair, Public Affairs Officer, BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA, 99212, or call (509) 536–1200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

Daniel C. Picard,

Spokane District Manager.

[FR Doc. 2012–1902 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–0112–9361; 8542–1003–IZF]

Information Collection Activities: Assessment Tools for Park-Based Youth Education and Employment Experience Programs

AGENCY: National Park Service (NPS), Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the Information Collection (IC) described below. This collection will consist of 9 separate survey instruments. As required by the Paperwork Reduction Act of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC.

DATES: To ensure that your comments on this IC are considered, we must receive them on or before March 30, 2012.

ADDRESSES: Please send your comments to Phadrea Ponds, Information Collections Coordinator, National Park Service, 1201 Oakridge Drive, Fort Collins, CO 80525 (mail); or *phadrea_ponds@nps.gov* (email). Please reference Information Collection 1024–NEW, SAMO Assessment in the subject line.

FOR FURTHER INFORMATION CONTACT: Antonio Solorio at *Antonio_Solorio@nps.gov* (email); or by mail at Santa Monica Mountains National Recreation Area, 401 W. Hillcrest Drive; Thousand Oaks, CA 91360.

I. Abstract

The Santa Monica Mountains National Recreation Area (SAMO) has three programs that provide continuous education and employment experience opportunities for diverse students in the vicinity of the park. We use a series of surveys to objectively evaluate the short and long-term success of these programs in shaping students' attitudes toward conservation, their recreational choices, and their career interests. Areas of interest include: (1) Understanding and concern for natural and cultural resource conservation and stewardship and resulting behavior changes both inside and outside parks; (2) Awareness and feelings toward the National Park Service; (3) Recreational interests and activities; (4) Influences on family and friends' attitudes and behaviors; (5) Education and career choices; and (6) Usefulness of work experience.

The SHRUB program provides education and in-depth involvement for students and their families in grade school. The EcoHelpers program provides one-day service learning programs to high school students. The SAMO Youth program provides progressive integrated work experience for high school and college students. While SAMO has many observational and anecdotal indications of success, no formal tools have been developed to evaluate these programs. The goal of this collection is to provide scientifically sound and reliable measures of outcomes for the three youth education and employment experience programs at SAMO. This assessment will be used to build the capacity of park youth program managers to help the park achieve its goal of continual program improvement and expanded documentation of program impact.

II. Data

OMB Control Number: 1024–NEW.

Title: Assessment Tools for Park-Based Youth Education and Employment Experience Programs.

Type of Request: This is a new collection.

Affected Public: General Public; College students, school aged children (elementary, middle and high school), and teachers.

Respondent Obligation: Voluntary.

Frequency of Collection: One-time.

Estimated Number of Annual Responses: 573.

	EcoHelpers	SHRUBS	SAMO Youth program	Total
Teachers	15	3	0	18
Students	340	135	80	555

Annual Burden Hours: 239 hours. We expect to receive 573 annual responses. We estimate an average of 25 minutes per response (5 minutes for the initial contact and 20 minutes to complete the survey instrument).

	EcoHelpers	SHRUBS	SAMO Youth program	Total
Annual Burden Hours	148	58	33	239

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We invite comments concerning this IC on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. 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 OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: January 24, 2012.

Catherine E. Burdett,

Acting Program Manager, Washington Administrative Program Center, National Park Service.

[FR Doc. 2012–1925 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–ANIA; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Aniakchak National Monument SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Aniakchak National Monument SRC Meeting Date and Location: The Aniakchak National Monument SRC will meet at the Chignik Lake Community Hall in Chignik Lake, Alaska, (907) 442–3890, on Wednesday, February 8, 2012. The meeting will start at 1 p.m. and conclude at 5 p.m. or until business is completed.

For Further Information on the Aniakchak National Monument SRC Meeting Contact: Ralph Moore, Superintendent at (907) 246–3305 or Mary McBurney, Subsistence Manager at (907) 235–7891 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Aniakchak National Monument SRC membership contact the Superintendent at P.O. Box 7, King Salmon, AK 99613, (907) 246–3305, or visit the park Web site at: *http://www.nps.gov/ania/contacts.htm*.

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to Order
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
   a. SRC Purpose
   b. SRC Membership (Elect Chair and Vice Chair)
6. SRC Member Reports/Comments
7. National Park Service Reports
   a. Superintendent Updates
   b. Subsistence Manager Updates
   c. Resource Management Updates
   d. Ranger Updates (Education, Resources and Visitor Protection)
8. Federal Subsistence Board Updates
9. Alaska Board of Game Updates
10. Old Business
    a. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Draft Environmental Assessment Update
11. New Business
12. Public and Other Agency Comments
13. SRC Work Session
14. Select Time and Location for Next Meeting
15. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1860 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–HE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–WRST;9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Wrangell-St. Elias National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Wrangell-St. Elias National Park SRC Meeting Date and Location: The Wrangell-St. Elias National Park SRC will meet at the Slana Community Hall (4 Mile Road, north of the junction with the Nabesna Road), on Monday, February 27, 2012. The meeting will start at 9:30 a.m. and conclude at 5 p.m. On February 28, 2012, the commission will reconvene and meet from 9 a.m. until business is completed.

For Further Information On the Wrangell-St. Elias National Park SRC Meeting Contact: Rick Obernesser, Superintendent or Barbara Cellarius, Subsistence Manager at (907) 822–5234 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Wrangell-St. Elias National Park SRC membership, contact the Superintendent at P.O. Box 439, Copper Center, AK 99573 (907) 822–5234, or visit the park Web site at: *http://www.nps.gov/wrst/contacts.htm*.

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. SRC Roll Call and Confirmation of Quorum
2. Introductions
3. Housekeeping Announcements
4. Review and Adopt Agenda
5. Review and Approval of Minutes—October 6–7, 2011 Meeting
6. Community Welcome
7. Superintendent's Welcome & SRC Purpose
8. Membership Status
9. Election of Officers
   a. Chair
   b. Vice Chair
10. Chairman's Report
11. Old Business
    a. Draft Environmental Assessment on the Subsistence Collections and Use of Shed or Discarded Animal Parts and Plants From NPS Areas in Alaska
    b. Update on Nabesna-Area ORV Management
    1. Trail Improvements and Other Trail-Related Activities Planned for Summer 2012
    2. Access to the National Park for Non-Local Family Members of Subsistence Users
    c. Update on Firewood Harvest and Portable Motors
    d. Report on Local Hire
    e. Update on NPS and FSB Tribal Consultation Efforts
12. New Business
    a. Call for Proposals to Change Federal Subsistence Fisheries Regulations
    b. GAAR SRC Hunting Plan Recommendation Regarding Wildlife Management
    c. GAAR SRC Hunting Plan Recommendation Regarding Per Diem Rates
13. Wrangell-St. Elias National Park and Preserve Staff Reports
    a. Resource Division Update
    b. Wildlife Report
    c. Fisheries Report
    d. Subsistence Coordinator's Report
    e. Ranger Division Update
    f. Superintendent's Report
14. Public and Other Agency Comments
15. Work Session (Comment on Issues, Prepare Letters, etc.)
16. Set Tentative Date and Location for Next Meeting
17. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1857 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–DENA; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Denali National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Denali National Park SRC Meeting Date and Location: The Denali National Park SRC will meet at the Nord Haven Lodge, Mile 249.5 Parks Highway, Healy, Alaska, (907) 683–4500, on Thursday, February 23, 2012. The meeting will start at 9 a.m. and conclude at 5 p.m. or until business is completed. Should a quorum of members not be available on Thursday,

February 23, 2012, the commission will meet at the Nord Haven Lodge on Saturday, February 25, 2012. This meeting will start at 9 a.m. and conclude at 5 p.m.

For Further Information on the Denali National Park SRC Meeting Contact: Philip Hooge, Assistant Superintendent, or Amy Craver, Subsistence Manager at (907) 683–2294 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Denali National Park SRC membership contact the Superintendent at P.O. Box 9, Denali Park, AK 99755, (907) 683–2294, or visit the park Web site at: *http://www.nps.gov/dena/contacts.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
6. SRC Purpose
7. SRC Member Status
8. Public and Other Agency Comments
9. Old Business:
   a. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Draft Environmental Assessment Update
10. New Business
11. Federal Subsistence Board Updates
12. Alaska Board of Game Updates
13. National Park Service Reports:
   a. Superintendent Updates
   b. Subsistence Manager Updates
   c. Resource Management Updates
   d. Ranger Updates
14. Public and other Agency Comments
15. SRC Work Session
16. Select Time and Location for Next Meeting
17. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1877 Filed 1–27–12; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–CAKR; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Cape Krusenstern National Monument SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Cape Krusenstern National Monument SRC Meeting Date and Location: The Cape Krusenstern National Monument SRC will meet at the National Park Service Northwest Arctic Heritage Center, 171 Third Avenue in Kotzebue, Alaska, (907) 442–3890, on Tuesday, February 14, 2012. The meeting will start at 9 a.m. and conclude at 5 p.m. or until business is completed.

For Further Information On the Cape Krusenstern National Monument SRC Meeting Contact: Frank Hays, Superintendent or Willie Goodwin, Subsistence Community Liaison, at (907) 442–3890 or Ken Adkisson, Subsistence Manager at (907) 443–2522 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Cape Krusenstern National Monument SRC membership contact the Superintendent at P.O. Box 1029, Kotzebue, AK 99752, (907) 442–3890, or visit the park Web site at: *http://www.nps.gov/cakr/contacts.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to Order
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
   a. SRC Purpose
   b. SRC Membership
6. SRC Member Reports/Comments
7. National Park Service Reports
   a. Superintendent Updates
   1. Unit 23 User Issues
   2. Local Hire/Internship
   3. Cross Cultural Education
   4. Consultation and Coordination with Indian Tribal Governments
   5. Protection of Archaeological Resources &Consultation Requirements
   6. Climate Change Research
   b. Subsistence Manager Updates
   c. Resource Management Updates
   d. Ranger Updates (Education, Resources and Visitor Protection)
8. Federal Subsistence Board Updates
9. Alaska Board of Game Updates
10. Old Business
   a. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Environmental Assessment Update
   b. Gates of the Arctic National Park SRC Draft Hunting Plan Recommendation 10–01 Update
11. New Business
12. Public and other Agency Comments
13. SRC Work Session
14. Select Time and Location for Next Meeting
15. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1876 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–HR–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–KOVA; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The November 15, 2011, meeting of the Kobuk Valley National

Park SRC, previously announced in the **Federal Register** Volume 76, Number 202 (Wednesday, October 19, 2011), was canceled due to a lack of quorum caused by inclement Arctic weather conditions. The NPS has rescheduled this meeting to occur on Wednesday, February 15, 2012, in Kotzebue, Alaska. The Kobuk Valley National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat .770) requires that public notice of this meeting be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Kobuk Valley National Park SRC Meeting Date and Location: The Kobuk Valley National Park SRC will meet at the National Park Service Northwest Arctic Heritage Center, 171 Third Avenue in Kotzebue, Alaska, (907) 442–3890, on Wednesday, February 15, 2012. The meeting will start at 9 a.m. and conclude at 5 p.m. or until business is completed.

For Further Information On the Kobuk Valley National Park SRC Meeting Contact: Frank Hays, Superintendent, or Willie Goodwin, Subsistence Community Liaison, at (907) 442–3890 or Ken Adkisson, Subsistence Manager, at (907) 443–2522 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Kobuk Valley National Park SRC membership, contact the Superintendent at P.O. Box 1029, Kotzebue, AK 99752, (907) 442–3890, or visit the park Web site at: *http://www.nps.gov/kova/contacts.htm*.

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to Order
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
   a. SRC Purpose
   b. SRC Membership
6. SRC Member Reports/Comments
7. National Park Service Reports
   a. Superintendent Updates
   1. Unit 23 User Issues
   2. Local Hire/Internship
   3. Cross Cultural Education
   4. Consultation and Coordination With Indian Tribal Governments
   5. Protection of Archaeological Resources & Consultation Requirements
   6. Climate Change Research
   b. Subsistence Manager Updates
   c. Resource Management Updates
   d. Ranger Updates (Education, Resources and Visitor Protection)
8. Federal Subsistence Board Updates
9. Alaska Board of Game Updates
10. Old Business
    a. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Environmental Assessment Update
    b. Gates of the Arctic Hunting Plan Recommendations Update
11. New Business
12. Public and Other Agency Comments
13. SRC Work Session
14. Select Time and Location for Next Meeting
15. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1872 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–HP–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–AKR–LACL; 9924–PYS]

Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Lake Clark National Park SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96–487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting date and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

Lake Clark National Park SRC Meeting Date and Location: The Lake Clark National Park SRC will meet at the National Park Service Visitor's Center, Port Alsworth, Alaska, (907) 781–2218, on Wednesday, February 22, 2012. The meeting will start at 11 a.m. and conclude at 4 p.m. or until business is completed.

For Further Information On the Lake Clark National Park SRC Meeting Contact: Joel Hard, Superintendent, at (907) 644–3626 or Mary McBurney, Subsistence Manager, at (907) 235–7891 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644–3603. If you are interested in applying for Lake Clark National Park SRC membership contact the Superintendent at 240 W. 5th Ave. Anchorage, AK 99501, (907) 644–3626,

or visit the park Web site at: *http://www.nps.gov/lacl/contacts.htm.*

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to Order—Confirm Quorum
2. Welcome and Introductions
3. Administrative Announcements
4. Approve Agenda
5. Approval of Minutes
6. SRC Purpose
7. SRC Member Status
8. Public and Other Agency Comments
9. Old Business
   a. Subsistence Collections and Uses of Shed or Discarded Animal & Plants Draft Environmental Assessment Update
10. New Business
11. Federal Subsistence Board Updates
12. Alaska Board of Game Updates
13. National Park Service Reports
   a. Superintendent Updates
   b. Subsistence Manager Updates
   c. Resource Management Updates
   d. Ranger Updates
14. Public and Other Agency Comments
15. SRC Work Session
16. Select Time and Location for Next Meeting
17. Adjourn Meeting

Debora R. Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2012–1875 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–GY–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0112–9281; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before January 7, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by February 14, 2012. 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.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARKANSAS

Howard County

Old Corinth Cemetery, AR 26, Center Point, 12000022

Union County

Bethel Methodist Church, SE. corner of AR 57 & Bethel Rd., Mount Holly, 12000023

Washington County

Fayetteville Veterans Administration Hospital, (United States Second Generation Veterans Hospitals) 1100 N. College Ave., Fayetteville, 12000024

ILLINOIS

Cook County

Lathrop, Julia C., Homes, Bounded by Clyburn, & N. Damen Aves., N. Leavitt St., & Chicago R., Chicago, 12000025 De Kalb County North Grove School, 26475 Brickville Rd., Sycamore, 12000026

Edwards County

St. Johns Episcopal Church, 20 E. Cherry St., Albion, 12000027

Jersey County

Fisher—Chapman Farmstead, 24818 Homeridge Dr., Jerseyville, 12000028

INDIANA

Marion County

Indianapolis Veterans Administration Hospital, (United States Second Generation Veterans Hospitals) 2601 Cold Springs Rd., Indianapolis, 12000029

IOWA

Buena Vista County

Sioux Theatre, (Movie Theaters of Iowa MPS) 218 Main St., Sioux Rapids, 12000030

OHIO

Cuyahoga County

Jones Home Subdivisions Historic District, Woodbridge, Marvin, Daisy, & Library Aves., & W. 25th St., Cleveland, 12000031

Shaker Farm Historic District,

Roughly bounded by Scarborough, Colchester, St. James, Roxboro, N. Park, Fairmount, Idlewood. E. Monmouth & Lee Sts., Cleveland Heights, 12000032

Geauga County

South Newbury Union Chapel, 15829 Ravenna Rd., Newbury, 12000033

SOUTH DAKOTA

Brule County

Bradshaw, O.G., Elevator, 220 W. Railroad St., Kimball, 12000034

Charles Mix County

Engel Hotel, 202 Main St., Lake Andes, 12000035

Hamlin County

Garfield Church and Cemetery, NW. corner of SD 28 & 443rd Ave., Bryant, 12000036

Minnehaha County

Odd Fellows Home of Dell Rapids, 100 W. 10th St., Dell Rapids, 12000037

[FR Doc. 2012–1854 Filed 1–27–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–750]

Certain Mobile Devices and Related Software Corrected Notice of Request for Statements on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Correction to Notice.

SUMMARY: This Notice corrects the notice in the same matter published January 25, 2012, Vol. 77, No. 16, page 77 FR 3794, to replace Motorola Solutions as Respondent with Motorola Mobility, Inc. The following notice provides the complete corrected notice:

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 Mobility, Inc. of Libertyville, Illinois (''Motorola'') that have been found to infringe the asserted patents and a cease and desist order directed to Motorola.

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 25, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–1921 Filed 1–27–12; 8:45 am]

BILLING CODE 7020–02–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 10, 2012.

Time: 9 a.m. to 5 p.m.

Location: Library of Congress, Jefferson Building, Room LJ–220, 101 Independence Avenue SE., Washington, DC 20540.

Program: This meeting will review applications for American History and Foreign Relations/American Studies, in Kluge Fellowships, submitted to the Division of Research Programs at the July 15, 2011 deadline.

2. *Date:* February 15, 2012.

Time: 9 a.m. to 5 p.m.

Location: Library of Congress, Jefferson Building, Room LJ–220, 101 Independence Avenue SE., Washington, DC 20540.

Program: This meeting will review applications for Literature, Art History, and Music in Kluge Fellowships, submitted to the Division of Research Programs at the July 15, 2011 deadline.

3. *Date:* February 17, 2012.

Time: 9 a.m. to 5 p.m.

Location: Library of Congress, Jefferson Building, Room LJ–220, 101 Independence Avenue SE., Washington, DC 20540.

Program: This meeting will review applications for Political Science and Law/European, Asian, and Middle Eastern Studies in Kluge Fellowships, submitted to the Division of Research Programs at the July 15, 2011 deadline.

Lisette Voyatzis,

Advisory Committee Management Officer.

[FR Doc. 2012–1856 Filed 1–27–12; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: February 2012

TIME AND DATES:

All meetings are held at 2:30 p.m.

Wednesday, February 1;
Thursday, February 2;
Tuesday, February 7;
Wednesday, February 8;
Thursday, February 9;
Tuesday, February 14;
Wednesday, February 15;
Thursday, February 16;
Tuesday, February 21;
Wednesday, February 22;
Thursday, February 23;
Tuesday, February 28;
Wednesday, February 29.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

DATED: January 26, 2012.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, (202) 273–1067.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 2012–2053 Filed 1–26–12; 4:15 pm]

BILLING CODE 7545–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: Thursday, February 2, 2012, from 8:15 a.m. to 5 p.m., and Friday, February 3, from 7:45 a.m. to 2:45 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201,Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office [call (703) 292–7000 or send an email message to *nationalsciencebrd@nsf.gov*] at least 24 hours prior to the teleconference and provide name and organizational affiliation. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the teleconference to receive a visitor's badge.

UPDATES: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*.

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov*, (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov*, (703) 292–7750.

STATUS: Portions open; portions closed.

OPEN SESSIONS:

February 2, 2012
8:15–8:20 a.m.
8:20–9 a.m.
9:45–10:30 a.m.
1–1:45 p.m.
1:45–2:45 p.m.
2:45–3:30 p.m.
3:30–4 p.m.
4–4:45 p.m.

February 3, 2012
7:45–9 a.m.
9–10 a.m.
11–11:30 a.m.
1:30–2:45 p.m.

CLOSED SESSIONS:

February 2, 2012
9–9:45 a.m.
10:30–11:45 a.m.
4:45–5 p.m.

February 3, 2012
10–11 a.m.
12:30–1:20 p.m.

MATTERS TO BE DISCUSSED:

Thursday, February 2, 2012

Committee on Programs and Plans (CPP) and Committee on Strategy and Budget Joint Session

Open Session: 8:20–9 a.m.
- Committee Chairmen's Remarks
- Discussion Item: NSF Annual Facilities Plan

Closed Session: 9–9:45 a.m.
- Discussion Item: NSF Annual Facilities Plan

Committee on Programs and Plans (CPP)

Open Session: 9:45–10:30 a.m.
- Approval of Minutes
- Committee Chairman's Remarks
- Information Item: ALMA Operations Update
- Discussion Item: Status of CPP Program Portfolio Planning

Closed Session: 10:30–11:45 a.m.
- Committee Chairman's Remarks
- Approval of Closed CPP Minutes for December 2011
- NSB Action: Operation of the International Astronomy Observatory

CSB Subcommittee on Facilities (SCF)

Open Session: 1–1:45 p.m.
- Chairman's Remarks
- Approval of minutes from the December 5 and December 13, 2011 meetings
- Discussion of NSF Facilities Plan and upcoming annual Portfolio Review
- Chairman's Closing Remarks

Subcommittee on Polar Issues (SOPI)

Open Session: 1:45–2:45 p.m.
- Chairman's Remarks and Approval of Open Session Minutes, December 2011
- Director's Remarks
- Presentation: U.S. Antarctic Program Blue Ribbon Panel Review
- Presentation: Future Research Opportunities in Antarctica—Report of a National Academy of Sciences/National Research Council study

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session 2:45–3:30 p.m.
- Approval of the November 29, 2011 teleconference minutes and December 13 meeting minutes
- Discussion of the MS Task Force draft report

CSB Task Force on Data Policies (DP)

Open Session: 3:30–4 p.m.

- Chairman's Remarks
- Approval of December 14, 2011 meeting minutes
- Discussion of the Public Comments on the Recommendations
- Discussion of Future Work of the Task Force
- Closing Remarks From the Chairman

Committee on Audit and Oversight (A&O)

Open Session: 4–4:45 p.m.
- Approval of Minutes of the December 2011 Open Session
- Committee Chairman's Opening Remarks
- Inspector General's Update
- Chief Financial Officer's Update
- Human Capital Management Update
- Committee Chairman's Closing Remarks

Committee on Audit and Oversight (A&O)

Closed Session: 4:45–5 p.m.
- Approval of Minutes of the December 2011 Meeting Closed Session
- Committee Chair's Opening Remarks
- Discussion of Procurement Activities

Friday, February 3, 2012

Committee on Education and Human Resources (CEH)

Open Session: 7:45–9 a.m.
- Approval of December 2011 minutes
- Presentation: Effective K–12 STEM Education
- Presentation: Research in Mathematics Education

Committee on Strategy and Budget (CSB)

Open Session: 9–10 a.m.
- Committee Chairman's Remarks
- Approval of December 13, 2011 Open Session minutes
- Task Force on Data Policies Update
- SCF Update
- NSF Merit Review Working Group Recommendations
- Strategic Planning for FY 2012 and beyond
- Cost Sharing
- Closing Remarks

Committee on Strategy and Budget (CSB)

Closed Session: 10–11 a.m.
- Approval of the December 13, 2011 Closed Session Minutes
- Policies and Planning for Budget Processes for FY 2013, FY 2014 and beyond

Committee on Science & Engineering Indicators (SEI)

Open Session: 11–11:30 a.m.
- Approval of December minutes
- Committee Chairman's Remarks
- Report on Rollout of *Science and Engineering Indicators 2012*
- Status of *Indicators* Companions
- Discussion of Inventory of Government Programs: Trade, Export, and Competitiveness Pilot
- Chairman's Summary

Plenary Board Meeting

Executive Closed Session: 12:30–1 p.m.
- Approval of Executive Closed Session Minutes, December 2011
- Election of *ad hoc* Committee on Nominating for NSB Elections
- Discussion of Candidate Sites for 2012 Board Retreat and Off-Site Meeting
- Approval of Honorary Award Recommendations

Plenary Board Meeting

Closed Session: 1–1:20 p.m.
- Approval of Closed Session Minutes, December 2011
- Awards and Agreements (Resolutions), From CPP
- Closed Committee Reports

Plenary Open

Open Session: 1:30–2:45 p.m.
- Approval of Open Session Minutes, December 2011
- Chairman's Report
- Director's Report
- Open Committee Reports

Meeting Adjourns: 2:45 p.m.

Ann Ferrante,

Technical Writer/Editor.

[FR Doc. 2012–2055 Filed 1–26–12; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Power Uprates; Notice of Meeting

The ACRS Subcommittee on Power Uprates will hold a meeting on February 23, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance with the exception for portions that may be closed to protect proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Thursday, February 23, 2012—8:30 a.m. until 5 p.m.

The Subcommittee will review the Open Items associated with the Turkey Point, Units 3 and 4, extended power uprate application. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone (301) 415–6279 or Email: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64127–64128).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: January 24, 2012.

Antonio F. Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–1913 Filed 1–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753, NRC–2012–0019]

Notice of Opportunity for Public Comment on the Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–432, Revision 1, ''Change in Technical Specifications End States (WCAP–16294)'' Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–432, Revision 1, ''Change in Technical Specifications End States (WCAP–16294).'' TSTF–432, Revision 1, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML103360003; the model application is available in ADAMS under Accession Number ML113202614. The proposed model SE for plant-specific adoption of TSTF–432, Revision 1, is available electronically under ADAMS Accession Number ML112991526.

The proposed change revises the Improved Standard Technical Specification (ISTS), NUREG–1431, ''Standard Technical Specifications Westinghouse Plants,'' to permit, for some systems, entry into a hot shutdown (Mode 4) end state rather than a cold shutdown (Mode 5) end state. The model SE will facilitate expedited approval of plant-specific adoption of TSTF–432, Revision 1. This TS improvement is part of the consolidated line item improvement process (CLIIP).

DATES: Comment period expires on February 29, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2012–0019 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the SUPPLEMENTARY INFORMATION section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2012–0019. Address questions about NRC dockets to Carol Gallagher, telephone: (301) 492–3668; email: *Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2012–0019.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12D20, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone (301) 415–1774 or email at *michelle.honcharik@nrc.gov*. For technical questions, please contact Ms. Kristy Bucholtz, Reactor Systems Engineer, Technical Specifications Branch, Mail Stop: O–7C2A, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone (301) 415–1295 or email at *kristy.bucholtz@nrc.gov*.

TSTF–432, Revision 1, is applicable to Westinghouse-designed pressurized water reactor (PWR) plants. The proposed changes revise the ISTS to permit, for some systems, entry into a hot shutdown (Mode 4) end state rather than a cold shutdown (Mode 5) end state. These changes are associated with the implementation of Topical Report WCAP–16294–NP–A, Revision 1, ''Risk-Informed Evaluation of Changes to Tech Spec Required Action Endstates for Westinghouse NSSS PWRs,'' dated June 2010 (ADAMS Package Accession Number ML103430264). TS Bases changes that reflect the proposed changes are included.

This notice provides an opportunity for the public to comment on proposed changes to the ISTS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the ISTS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed changes and reconsider the changes or announce the availability of the changes for adoption by licensees as part of the CLIIP. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE., and the applicable technical justifications, providing any necessary plant-specific

information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–432, Revision 1. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–432, Revision 1.

Dated at Rockville, Maryland, this 17th day of January 2012.

For the Nuclear Regulatory Commission.

John R. Jolicoeur,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–1912 Filed 1–27–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29926; File No. 812–13994]

GE Asset Management Incorporated, et al.; Notice of Application and Temporary Order

January 24, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against GE Funding Capital Market Services, Inc. (''GE Funding CMS'') on January 23, 2012 by the United States District Court for the District of New Jersey (''Injunction'') until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: GE Asset Management Incorporated (''GEAM''), GE Investment Distributors, Inc. (''GEID'') and GE Funding CMS (each an ''Applicant'' and collectively, the ''Applicants'').[1]

Filing Date: The application was filed on December 23, 2011, and amended on January 23, 2012.

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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 21, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: GEAM and GEID, 1600 Summer Street, Stamford, CT 06905 and GE Funding CMS, 201 High Ridge Road, Stamford, CT 06905.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551–6811 or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. GE Funding CMS is a corporation organized under the laws of Delaware. GE Funding CMS does not currently serve as investment adviser, sub-adviser, or depositor of any registered investment company, business development company (''BDC''), or principal underwriter for any registered open-end investment company, registered unit investment trust (''UIT'') or registered face amount certificate company, or investment adviser of any employees' securities company, as defined in section 2(a)(13) of the Act (''ESC'') (''Fund Service Activities''). ''Funds'' refers to the registered investment companies, BDCs or ESCs for which a Covered Person provides Fund Service Activities. GE Funding CMS is an indirect, wholly-owned subsidiary of General Electric Company (''GE''), which also directly or indirectly wholly-owns the other Applicants. GE is a large and diversified technology, media and financial services company that serves customers in more than 100 countries.

2. GEAM, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (''Advisers Act''). GEAM serves as investment adviser or sub-adviser to a number of Funds. GEID is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act''). GEID serves as principal underwriter to a number of Funds.

3. On January 23, 2012, the United States District Court for the District of New Jersey entered a judgment, which included the Injunction, against GE Funding CMS (''Judgment'') in a matter brought by the Commission.[2] The Commission alleged in the complaint (''Complaint'') that from August 1999 to September 2004, personnel of GE Funding CMS engaged in fraudulent practices and made misrepresentations and omissions in connection with bidding on municipal reinvestment instruments. The Complaint alleged that GE Funding CMS engaged in fraudulent practices, misrepresentations, and omissions that affected the prices of certain reinvestment instruments, deprived certain municipalities of a presumption that their reinvestment instruments were purchased at fair market value, and/or jeopardized the tax-exempt status of certain securities. Based on the alleged misconduct described above, the Complaint alleged that GE Funding CMS violated section 17(a) of the Securities Act of 1933. Without admitting or denying any of the allegations in the Complaint (other than those relating to the jurisdiction of the District Court over it and the subject matter, solely for purposes of this action), GE Funding CMS consented to the entry of the Injunction and other relief, including disgorgement, prejudgment interest, and a civil monetary penalty.

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which GE Funding CMS is or may become an affiliated person within the meaning of section 2(a)(3) of the Act (together with the Applicants, the ''Covered Persons'').

[2] *U.S. Securities and Exchange Commission* v. *GE Funding Capital Market Services, Inc.,* Case No. 2:11–cv–07465–WJM–MF (D.N.J. Dec. 23, 2011).

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an underwriter, broker or dealer, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered UIT, or registered face-amount certificate company or as investment adviser of an ESC. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that GE Funding CMS is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a) of the Act.

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) of the Act if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them and other Covered Persons from the disqualification provisions of section 9(a).

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants engaging in Fund Service Activities. Applicants state that to the best of their knowledge none of the current or former directors, officers, or employees of the Applicants (other than GE Funding CMS) that were involved in providing Fund Service Activities had any knowledge of or had any involvement in the violative conduct alleged in the Complaint. Applicants further represent that the personnel of GE Funding CMS who had any responsibility for, or involvement in, the violations alleged in the Complaint are no longer employed by GE Funding CMS and have had no, and in the present or future will not have any, involvement in providing Fund Service Activities to the Funds.

5. Applicants state that the inability of the Applicants to engage in Fund Service Activities would result in potentially severe financial hardships for the Funds they serve and the Funds' shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of directors of the Funds (excluding for this purpose the ESCs) (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, describing the circumstances that led to the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with the information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing Fund Service Activities to registered investment companies and ESCs, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in providing Fund Service Activities. Applicants further state that prohibiting them from providing Fund Service Activities would not only adversely affect their businesses, but would also adversely affect approximately 460 employees that are involved in those activities. Applicants also state that disqualifying certain Applicants from continuing to provide investment advisory services to ESCs is not in the public interest or in furtherance of the protection of investors. Because the ESCs have been formed for the benefit of key employees, officers, and directors of GE and its affiliates, it would not be consistent with the purposes of the ESC provisions of the Act to require another entity not affiliated with GE to manage the ESCs. In addition, participating employees of GE and its affiliates likely subscribed for interests in the ESCs with the expectation that the ESCs would be managed by GEAM.

7. Applicants state that Applicants and certain other affiliated persons of the Applicants have previously received orders under section 9(c) of the Act, as the result of conduct that triggered section 9(a), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from January 23, 2012, until the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–1890 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29924; 812–13921]

Incapital LLC and Incapital Unit Trust; Notice of Application

January 24, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under (a) section 6(c) of the Investment

Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b–1 and 22c–1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

Applicants: Incapital LLC (''Incapital'') and Incapital Unit Trust (the ''Incapital Trust'').[1]

Summary of Application: Applicants request an order to permit certain unit investment trusts to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account $100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

DATES: *Filing Dates:* The application was filed on July 13, 2011, and amended on December 2, 2011, and January 13, 2012.

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 Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 17, 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 writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, 200 South Wacker Drive, Suite 3700, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551–6817, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Incapital Trust is a unit investment trust (''UIT'') that is registered under the Act. Any future Trust will be a registered UIT. Incapital, an Illinois limited liability company, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the Depositor of the Incapital Trusts. Each Series will be created by a trust indenture between the Depositor and a banking institution or trust company as trustee (''Trustee'').

2. The Depositor acquires a portfolio of securities, which it deposits with the Trustee in exchange for certificates representing units of fractional undivided interest in the Series' portfolio (''Units''). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying securities, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge. The maximum sales charge may be reduced in compliance with rule 22d–1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor may, but is not legally obligated to, maintain a secondary market for Units of outstanding equity Series. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end sales charge. If such a market is not maintained at any time for any Series, holders of the Units (''Unitholders'') of that Series may redeem their Units through the Trustee.

A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis (''DSC''). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected ''up front'' (i.e., at the time an investor purchases the Units). The DSC would be collected subsequently in installments (''Installment Payments'') as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d–1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N–1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient and that securities will be sold pro rata, if practicable, otherwise a specific security will be designated for sale.

B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series (''Exchange Option'') and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type (''Rollover Option''). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge or DSC.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge

[1] Applicants also request relief for future unit investment trusts (collectively, with the Incapital Trust, the ''Trusts'') and series of the Trusts (''Series'') that are sponsored by Incapital or any entity controlling, controlled by or under common control with Incapital (together with Incapital, the ''Depositors''). Any future Trust and Series that relies on the requested order will comply with the terms and conditions of the application. All existing entities that currently intend to rely on the requested order are named as applicants.

than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

Applicants' Legal Analysis

A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a ''unit investment trust'' as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a ''redeemable security'' as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c–1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value (''NAV''). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c–1.

2. Section 22(d) of the Act and rule 22d–1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term ''sales load'' as the difference between the sales price and the portion of the proceeds invested by the depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d–1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Trustee's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Trustee to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

B. Exchange Option and Rollover Option

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option.

C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have $100,000 of net worth prior to making a public offering. Applicants state that each Series will comply with this requirement because the Depositor will deposit more than $100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a–3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in ''eligible trust securities,'' as defined in the rule. Applicants state that they may not rely on rule 14a–3 because certain Series (collectively, ''Equity Series'') will invest all or a portion of their assets in equity securities or shares of registered investment companies which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Equity Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a–3, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b–1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b–1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a–3) from the requirements of rule 19b–1. Because the Equity Series do not limit their investments to eligible trust securities, however, the Equity Series will not qualify for the exemption in paragraph (c) of rule 19b–1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b–1 to the extent necessary to permit capital gains earned in connection with the sale of portfolio securities to be distributed to Unitholders along with the Equity Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b–1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Equity Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

A. DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or the Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or the Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c–10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N–1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

B. Net Worth Requirement

1. Applicants will comply in all respects with the requirements of rule 14a–3 under the Act, except that the Equity Series will not restrict their portfolio investments to ''eligible trust securities.''

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1893 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Advisory Committee on Small and Emerging Companies will hold a public meeting on Wednesday, February 1, 2012, in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE., Washington, DC. The meeting will begin at 10 a.m. (EST) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:30 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's Web site at *www.sec.gov.*

Commissioner Walter, as duty officer, determined that no earlier notice thereof was possible.

On January 10, 2012, the Commission published notice of the Committee meeting (Release No. 33–9293), indicating that the meeting is open to the public and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes consideration of recommendations and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 26, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–2034 Filed 1–26–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66213; File No. SR–CBOE–2012–009]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Appointments in Hybrid 3.0 Classes

January 23, 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 17, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to Lead Market-Maker (''LMM'') and Supplemental Market-Maker (''SMM'') appointments in Hybrid 3.0 classes.[5] The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ''Hybrid Trading System'' refers to the Exchange's trading platform that allows Market-Makers to submit electronic quotes in their appointed classes. ''Hybrid 3.0 Platform'' is an electronic trading platform on the Hybrid Trading System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. Classes authorized by the Exchange for trading on the Hybrid Trading System are referred to as ''Hybrid classes.'' Classes authorized by the Exchange for trading on the Hybrid 3.0 Platform are referred to as ''Hybrid 3.0 classes.'' References to ''Hybrid,'' ''Hybrid System,'' or ''Hybrid Trading System'' in the Exchange's Rules include all platforms unless otherwise provided by rule. *See* Rule 1.1(aaa).

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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules to permit the appointment of one or more LMMs or SMMs to participate in modified opening rotations and/or other opening rotations in Hybrid 3.0 classes.

By way of background, Hybrid 3.0 is an electronic trading platform on CBOE's Hybrid System that allows one or more quoters to submit electronic quotes which represent the aggregate Market-Maker quoting interest in a series for the trading crowd. Under Rule 8.15, *Lead Market-Makers and Supplemental Market-Makers in Hybrid 3.0 Classes,* if a Designated Primary Market-Maker (''DPM'') has not been appointed for a given Hybrid 3.0 class, the Exchange may appoint one or more LMMs and SMMs to perform this quoting function.[6] As part of their obligations, appointed LMMs and SMMs in Hybrid 3.0 classes determine the formula for generating automatically updated market quotations during the trading day and provide opening quotes during the opening rotation process.

In order to facilitate a fair and orderly market during opening rotations, the Exchange is proposing to amend the appointment procedures to permit the Exchange to appoint one or more LMMs and SMMs to participate in the modified opening rotation described in Interpretation .01 to Rule 6.2B, *Hybrid Opening System (''HOSS''),*[7] to participate in other opening rotations using HOSS described more generally in Rule 6.2B,[8] and/or determine the formula for generating automatically updated market quotations during the trading day. Thus, as proposed, one or more LMMs and SMMs could be appointed to perform some of [sic] all of these three functions.[9]

The Exchange believes that having the ability to appoint LMMs and SMMs in this fashion—and thereby having the flexibility to appoint additional LMMs and SMMs for opening rotations, particularly for modified opening rotations—would help the Exchange to maintain a fair and orderly market, including in those instances on the opening where there may be significant order imbalances and/or where a quoter(s) may be experiencing system problems and back-up quotes are needed. The Exchange also believes the proposal is consistent with a provision in the Exchange Rules that had been applicable to LMM and SMM appointments in Non-Hybrid System classes. That provision permitted the Exchange to appoint one or more LMMs and SMMs to participate in modified rotations in S&P 100 Index options (symbol OEX) described in Interpretation .02 to Rule 24.13, *Trading Rotations,* opening rotations using the Exchange's Rapid Opening System (''ROS'') described in Rule 6.2A, *Rapid Opening System,* and/or to determine a formula for generating automatically updated market quotations during the trading day. This provision had applied when the Exchange operated on a different trading platform (referred to as the ''Non-Hybrid System''), which utilized the ROS technology for opening rotations.[10]

2. Statutory Basis

The Exchange believes the rule proposal is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) Act[12] [sic] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. In particular, the Exchange believes having the ability to appoint LMMs and SMMs as proposed would help the Exchange to maintain a fair and orderly market, including in those instances on the opening where there may be significant order imbalances and/or where a quoter(s) may be experiencing system problems and back-up quotes are needed, in a

[6] For example, currently the only class traded on the Hybrid 3.0 Platform is the S&P 500 Index option class, symbol SPX. For this class, currently the Exchange has approved four Market-Maker organizations to function as LMMs in SPX on a rotating basis. Under the current rotation procedures, the Exchange has determined to appoint two LMMs per expiration month to perform this quoting function. Currently the Exchange does not utilize any SMMs.

[7] The modified HOSS opening rotation procedure is used on settlement days of volatility index options and futures contracts for which the index options used to calculate the volatility index are Hybrid 3.0 classes. Currently, the SPX option class is the only Hybrid 3.0 option class in which the modified HOSS opening procedure is utilized. Specifically, the modified HOSS opening procedure is utilized in certain SPX option series on settlement days for CBOE Volatility Index (VIX) options and futures contracts.

The settlement date for volatility index options and futures contracts is on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which the applicable volatility index options or futures contract expires. If the third Friday of the month subsequent to expiration of the applicable volatility index futures or options contract is a CBOE holiday, the final settlement date for the respective contract shall be thirty days prior to the CBOE business day immediately preceding that Friday. On these settlement dates, Rule 6.2B.01 provides for a modified HOSS opening procedure only in those index option series (i) that are Hybrid 3.0 classes and (ii) whose prices are used to calculate a volatility index on which an option or future is traded. (The modified HOSS opening procedure may be suspended by two Floor Officials in the event of unusual market conditions.)

[8] There are two other HOSS opening rotation procedures in Rule 6.2B: the normal HOSS opening rotation procedure referenced in Rule 6.2B and the Hybrid Agency Liaison opening rotation procedure referenced in Rule 6.2B.03 (referred to as ''HAL–O''). Either the normal opening procedure or the HAL–O procedure, as determined by the Exchange, is used on all other days in those index options and on the volatility index options and futures settlement date in all contract months whose prices are not used to calculate the applicable volatility index. (The Exchange notes that, currently for SPX, the normal opening procedure referenced in Rule 6.2B is used.)

[9] By comparison, for example, currently, the appointed LMMs in SPX perform all of these functions. Under the proposed rule change the Exchange may determine, for example, to appoint two LMMs to perform all three functions for a given expiration month, and may also to [sic] determine to appoint one or more additional LMMs to participate in the modified opening rotation process described in Rule 6.2B.01.

[10] *See* introductory language to Rule 8.15. Since the Exchange not [sic] longer utilizes the Non-Hybrid System and ROS (instead, options that trade on the Hybrid 3.0 Platform must use the HOSS system described in Rule 6.2B), this provision is outdated and unnecessary. *See* Securities Exchange Act Release No. 58422 (August 25, 2008), 73 FR 51029 (August 29, 2008) (SR–CBOE–2008–089) (which, among other things, amended the title of Rule 8.15 to delete an outdated reference to ''Non-Hybrid''). Therefore, in conjunction with this instant proposed rule change, the Exchange is also proposing to delete this outdated provision in Rule 8.15. In addition, the Exchange is proposing certain non-substantive changes to reorganize the text so that it is easier to read and understand (in particular, the phrase ''with an appointment in an option class for which a DPM has not been appointed'' is being deleted and the phrase ''in an option class for which a DPM has not been appointed'' is being inserted elsewhere within the introductory language to Rule 8.15.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

manner that is consistent with a provision on [sic] the Exchange Rules that had been applicable to LMM and SMM appointments in Non-Hybrid System classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because such waiver will help the Exchange to maintain a fair and orderly market. Therefore, the Commission designates the proposal operative upon filing.[15]

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.

[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] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–009 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–CBOE–2012–009. 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 publicly available. All submissions should refer to File Number SR–CBOE–2012–009, and should be submitted on or before February 21, 2012.

[16] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1869 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66214; File No. SR–NASDAQ–2012–010]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of the Trading Pause for NMS Stocks Other Than Rights and Warrants

January 23, 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 11, 2012, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of the trading pause for individual NMS stocks other than rights and warrants, so that the pilot will now expire on July 31, 2012.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

4120. Trading Halts

(a) Authority To Initiate Trading Halts or Pauses

In circumstances in which Nasdaq deems it necessary to protect investors and the public interest, Nasdaq, pursuant to the procedures set forth in paragraph (c):

(1)–(10) No change.

(11) shall, between 9:45 a.m. and 3:35 p.m., or in the case of an early scheduled close, 25 minutes before the close of trading, immediately pause trading for 5 minutes in any Nasdaq-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

listed security, other than rights and warrants, when the price of such security moves a percentage specified below within a 5-minute period.

(A) The price move shall be 10% or more with respect to securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products;

(B) The price move shall be 30% or more with respect to all NMS stocks not subject to section (a)(i) of this Rule with a price equal to or greater than $1; and

(C) The price move shall be 50% or more with respect to all NMS stocks not subject to section (a)(i) of this Rule with a price less than $1.

The determination that the price of a stock is equal to or greater than $1 under paragraph (a)(11)(B) above or less than $1 under paragraph (a)(11)(C) above shall be based on the closing price on the previous trading day, or, if no closing price exists, the last sale reported to the Consolidated Tape on the previous trading day.

At the end of the trading pause, Nasdaq will re-open the security using the Halt Cross process set forth in Nasdaq Rule 4753. In the event of a significant imbalance at the end of a trading pause, Nasdaq may delay the re-opening of a security.

Nasdaq will issue a notification if it cannot resume trading for a reason other than a significant imbalance.

Price moves under this paragraph will be calculated by changes in each consolidated last-sale price disseminated by a network processor over a five minute rolling period measured continuously. Only regular way in-sequence transactions qualify for use in calculations of price moves. Nasdaq can exclude a transaction price from use if it concludes that the transaction price resulted from an erroneous trade.

If a trading pause is triggered under this paragraph, Nasdaq shall immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. If a primary listing market issues an individual stock trading pause, Nasdaq will pause trading in that security until trading has resumed on the primary listing market or notice has been received from the primary listing market that trading may resume. If the primary listing market does not reopen within 10 minutes of notification of a trading pause, Nasdaq may resume trading the security. The provisions of this paragraph shall be in effect during a pilot set to end on *July 31, 2012* [January 31, 2012].

* * * * *

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

On June 10, 2010, the Commission granted accelerated approval, for a pilot period to end December 10, 2010, for a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to pause trading during periods of extraordinary market volatility in S&P 500 stocks.[3] The rules require the Listing Markets[4] to issue five-minute trading pauses for individual securities for which they are the primary Listing Market if the transaction price of the security moves ten percent or more from a price in the preceding five-minute period. The Listing Markets are required to notify the other Exchanges and market participants of the imposition of a trading pause by immediately disseminating a special indicator over the consolidated tape. Under the rules, once the Listing Market issues a trading pause, the other Exchanges are required to pause trading in the security on their markets. On September 10, 2010, the Commission approved the respective rule filings of the Exchanges to expand application of the pilot to the Russell 1000® Index and specified Exchange Traded Products.[5] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[6] On March 31, 2011, the Exchange filed an immediately effective filing to extend the pilot period an additional four months, so that the pilot would expire on August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[7] On June 23, 2011, the Commission approved the expansion of the pilot to all NMS stocks, but with different pause-triggering thresholds.[8] On August 8, 2011, the Exchange filed an immediately effective filing that removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[9] On November 18, 2011, the Exchange filed an immediately effective filing that excluded rights and warrants from the pilot.[10]

The Exchange believes that the pilot program has been successful in reducing the negative impacts of sudden, unanticipated price movements in the securities covered by the pilot. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to assess whether circuit breakers are the best means to reduce the negative impacts of sudden, unanticipated price movements or whether alternative mechanisms would be more effective in achieving this goal.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[11] which requires the rules of an

[3] Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (SR–NASDAQ–2010–061).

[4] The term ''Listing Markets'' refers collectively to NYSE, NYSE Amex, NYSE Arca, and the Exchange.

[5] Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (SR–NASDAQ–2010–079).

[6] Securities Exchange Act Release No. 63505 (December 9, 2010), 75 FR 78302 (December 15, 2010) (SR–NASDAQ–2010–162).

[7] Securities Exchange Act Release No. 64174 (April 4, 2011), 76 FR 19819 (April 8, 2011) (SR–NASDAQ–2011–042).

[8] Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (SR–NASDAQ–2011–067, *et al.*).

[9] Securities Exchange Act Release No. 65094 (August 10, 2011), 76 FR 50779 (August 16, 2011) (SR–NASDAQ–2011–115).

[10] Securities Exchange Act Release No. 65814 (November 23, 2011), 76 FR 74084 (November 30, 2011) (SR–NASDAQ–2011–154).

[11] 15 U.S.C. 78f(b)(5).

exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [12] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to pause trading in a security when there are significant price movements.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [18] 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.[19]

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–NASDAQ–2012–010 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–NASDAQ–2012–010. 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–NASDAQ–2012–010 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1870 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78k–1(a)(1).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 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.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] 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).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66222; File No. SR–EDGX–2012–02]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.13 To Extend the Operation of a Pilot Program Pursuant to the Rule Until July 31, 2012

January 24, 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 11, 2012, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') filed with the Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGX Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until July 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, 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 11.13, through July 31, 2012.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] Then, it was further extended through January 31, 2012.[6]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGX Rule 11.13 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.[7] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[8] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[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

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[4] *See* Securities Exchange Act Release No. 63515 (December 10, 2010), 75 FR 78319 (December 15, 2010) (SR–EDGX–2010–23).

[5] *See* Securities Exchange Act Release No. 64229 (April 7, 2011), 76 FR 20738 (April 13, 2011) (SR–EDGX–2011–11).

[6] *See* Securities Exchange Act Release No. 65073 (August 9, 2011), 76 FR 50512 (August 15, 2011) (SR–EDGX–2011–24).

[7] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGX–2010–03).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[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).

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.[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–EDGX–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 No. SR–EDGX–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 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–EDGX–2012–02 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1882 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[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. 34–66221; File No. SR–NSX–2012–02]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Rules To Extend Pilot Program Regarding Clearly Erroneous Executions

January 24, 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 11, 2012, National Stock Exchange, Inc. 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

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend its rules to extend a certain pilot program regarding clearly erroneous executions.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

With this rule change, the Exchange is proposing to extend the pilot program currently in effect regarding clearly erroneous executions under NSX Rule 11.19. Currently, unless otherwise extended or approved permanently, this pilot program will expire on January 31, 2011. The instant rule filing proposes to extend the pilot program until July 31, 2012 as defined in Commentary .05 of Rule 11.20.

NSX Rule 11.19 (Clearly Erroneous Executions) was approved by the Securities and Exchange Commission (the ''Commission'') on September 10, 2010 on a pilot basis to end on December 10, 2010.[3] The pilot program end date was subsequently extended until April 11, 2011.[4] Similar rule changes were adopted by other markets in the national market system in a coordinated manner. During the pilot period, the Exchange, in conjunction with the Commission and other markets, has continued to assess the effectiveness of the pilot program. The pilot program end date was further extended until August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted applies.[5] The pilot program was then again lengthened until January

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NSX–2010–07).

[4] *See* Securities Exchange Act Release No 63484 (December 9, 2010), 75 FR 78330 (December 15, 2010) (SR–NSX–2010–16).

[5] *See* Securities Exchange Act Release No. 64242 (April 7, 2011), 76 FR 20763 (April 15, 2011) (SR–NSX–2011–05).

31, 2012.[6] The Exchange, in consultation with the Commission and other markets, is now proposing that this pilot program be extended until July 31, 2012. Accordingly, pursuant to the instant rule filing, the expiration date of the pilot program referenced in the first two sentences of Rule 11.19 is proposed to be changed from ''January 31, 2012'' to ''July 31, 2012.''

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) and Section 11A of the Securities Exchange Act of 1934[7] (the ''Act''), in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed, among other things, to promote clarity, transparency and full disclosure, in so doing, 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 a national market system, and, in general, to maintain fair and orderly markets and protect investors and the public interest. Moreover, the proposed rule change is not discriminatory in that it uniformly applies to all ETP Holders. The Exchange believes that the extension of the pilot program will promote uniformity among markets with respect to clearly erroneous executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate 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[9] and Rule 19b–4(f)(6) thereunder.[10] 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[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. 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.[15]

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–NSX–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 No. SR–NSX–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 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–NSX–2012–02 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1881 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 65067 (August 9, 2011), 76 FR 50533 (August 15, 2011) (SR–NSX–2011–09).

[7] 15 U.S.C. 78f(b) and 15 U.S.C. 78k–1, respectively.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66220; File No. SR–FINRA–2012–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change and Partial Amendment No. 1 To Amend FINRA Rule 4560 (Short-Interest Reporting)

January 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2012, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. On January 20, 2012, FINRA filed Partial Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Partial Amendment No. 1, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 4560 (Short-Interest Reporting).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA Rule 4560 (''Short-Interest Reporting'' or the ''Rule'') requires each FINRA member to maintain a record of total short positions in all customer and proprietary firm accounts in all equity securities (other than Restricted Equity Securities as defined in Rule 6420) and regularly report such information to FINRA in the manner prescribed by FINRA. The Rule generally provides that the short positions to be recorded and reported are those resulting from ''short sales'' as that term is defined in Rule 200(a) of SEC Regulation SHO.[4] FINRA is proposing to amend the Rule to clarify members' recording and reporting obligations and to delete several exceptions to the Rule.

First, FINRA is proposing to codify interpretive guidance previously issued by the Intermarket Surveillance Group (ISG) that instructed members to report ''gross'' short positions existing in each proprietary and customer account (rather than net positions across accounts).[5] Thus, the proposed rule change provides that members must report all gross short positions existing in each firm or customer account, including the account of a broker-dealer, that resulted from a ''short sale'' as that term is defined in Rule 200(a) of SEC Regulation SHO, as well as where the sale transaction that caused the short position was marked ''long,'' consistent with SEC Regulation SHO, due to the firm's or the customer's net long position at the time of the transaction (*e.g.,* aggregation units).

Second, FINRA is clarifying that members' short-interest reports must reflect only those short positions that have settled or reached settlement date by the close of the reporting settlement date designated by FINRA. Therefore, short positions resulting from short sales that were effected but have not reached settlement date by the given designated reporting settlement date, should not be included in a member's short-interest report for that reporting cycle. Of course, short-interest positions resulting from short sales that reached the expected settlement date, but failed to settle (*i.e.,* ''fails''), must be included.

Third, FINRA is clarifying that members must reflect company-related actions in their short-interest reports adjusted as of the ex-date of the corporate action (and if no ex-date is declared by a self-regulatory organization (''SRO''), then the payment date).[6] Therefore, for the purposes of short-interest reporting, members must reflect corporate actions (*e.g.,* a reverse or forward split) that impact the total number of shares in the short position in their short-interest report for a reporting cycle if the ex-date of the corporate action occurs by the reporting settlement date designated by FINRA for such cycle (even if payment of the distribution is not received until after the designated reporting settlement date).

Finally, consistent with discussions with the ISG, FINRA is proposing amendments to delete certain existing exceptions to the Rule.[7] At present, the Rule provides five exceptions, including an exception for stabilizing activity, domestic arbitrage and international arbitrage. FINRA, in cooperation with the ISG Short Interest Working Group (''ISG Working Group''), determined that the transactions addressed in these three exceptions result in the type of short positions that would be of interest to regulators and the public, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of proposed Partial Amendment No. 1 is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

[4] Rule 200 of SEC Regulation SHO provides that ''short sale'' means ''any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.'' *See* Rule 200(a) of SEC Regulation SHO, 17 CFR 242.200. SEC Rule 200 further provides, among other things, that a person is deemed to own a security if: (a) The person or his agent has title to it; or (b) The person has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it, but has not yet received it; or (c) The person owns a security convertible into or exchangeable for it and has tendered such security for conversion or exchange; or (d) The person has an option to purchase or acquire it and has exercised such option; or (e) The person has rights or warrants to subscribe to it and has exercised such rights or warrants; or (f) The person holds a security futures contract to purchase it and has received notice that the position will be physically settled and is irrevocably bound to receive the underlying security. *See* Rule 200(b) of SEC Regulation SHO.

[5] *See* Intermarket Surveillance Group, Consolidated Reporting of Short Interest Positions, ISG Regulatory Memorandum 95–01 (March 6, 1995).

[6] The ex-date is the date on or after which a security is traded without a specific dividend or distribution. The ex-date also is the date that DTCC uses to determine who is entitled to the distribution. The payable date is the date that the dividend is sent to the record owner of the security. *See e.g., Regulatory Notice* 00–54 (August 2000).

[7] FINRA has worked closely with other SRO members of the ISG, a group that includes representatives of every U.S. SRO, to address problems that reach across marketplaces. Each ISG member adopted consistent short-interest reporting rules to enhance surveillance capabilities, augment market transparency, enable investors to make more informed decisions, and provide greater disclosure for regulatory purposes.

therefore, determined that these exceptions no longer are appropriate.[8]

FINRA believes that the proposed amendments will remove confusion regarding the operation of the Rule and help facilitate the availability to the public and regulators of accurate and complete short-interest information.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 120 days following Commission approval. The effective date will be no more than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will promote consistency and accuracy in the calculation and reporting of short-interest positions by members.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–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 Number SR–FINRA–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 FINRA. 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–FINRA–2012–001 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[8] FINRA and the ISG Working Group determined that the remaining two exceptions continue to be appropriate. Specifically, the exception for sales for an account in which the person has an interest, owns the security and intends to deliver it as soon as is possible (which FINRA is retaining) is intended to address circumstances where there may be a brief delay in delivery but the sale is a long sale, *i.e.,* exercise of a right, option, or warrant. In addition, the over-allotment exception (which FINRA also is retaining) addresses the narrow circumstance where the underwriter has not received shares and results in a short position for a very brief duration.

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66223; File No. SR–EDGA–2012–02]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.13 To Extend the Operation of a Pilot Program Pursuant to the Rule Until July 31, 2012

January 24, 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 11, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.13 to extend the operation of a pilot pursuant to the Rule (the ''Pilot'') until July 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 11.13, through July 31, 2012.

Background

The rule, explained in further detail below, was initially approved to operate under a Pilot program set to expire on December 10, 2010.[3] Then, it was subsequently extended by the Exchange to April 11, 2011.[4] Then, it was further extended by the Exchange through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] Then, it was further extended until January 31, 2012.[6]

On September 10, 2010, the Commission approved, on a Pilot basis, changes to EDGA Rule 11.13 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.[7] The Exchange also adopted additional changes to Rule 11.13 that reduced the ability of the Exchange to deviate from the objective standards set forth in Rule 11.13.[8] The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should be approved to continue on a Pilot basis through July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule meets these requirements 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[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 as 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:

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[4] *See* Securities Exchange Act Release No. 63517 (December 10, 2010), 75 FR 78318 (December 15, 2010) (SR–EDGA–2010–24).

[5] *See* Securities Exchange Act Release No. 64230 (April 7, 2011), 76 FR 20770 (April 13, 2011) (SR–EDGA–2011–12).

[6] *See* Securities Exchange Act Release No. 65074 (August 9, 2011), 76 FR 50511 (August 15, 2011) (SR–EDGA–2011–25).

[7] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–EDGA–2010–03).

[8] *Id.*

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[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).

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–EDGA–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 No. SR–EDGA–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 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–EDGA–2012–02 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1883 Filed 1–27–12; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66225; File No. SR–NASDAQ–2012–011]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

January 24, 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 12, 2012, The NASDAQ Stock Market LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on July 31, 2012.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *July 31, 2012*[January 31, 2012]. If the pilot is not either extended or approved permanent by *July 31, 2012*[January 31, 2012], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) No change.

* * * * *

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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] On August 5, 2011, the Exchange filed an immediately effective filing removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[6] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 11890 so that it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63489; (December 9, 2010), 75 FR 78281 (December 15, 2010).

[5] Securities Exchange Act Release No. 64238 (April 7, 2011), 76 FR 20780 (April 13, 2011) (SR–NASDAQ–2011–043).

[6] Securities Exchange Act Release No. 65068 (August 9, 2011), 76 FR 50508 (August 15, 2011) (SR–NASDAQ–2011–114).

would continue to operate in the same manner after changes to the single stock trading pause process became effective.[7]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[8] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[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–NASDAQ–2012–011 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–NASDAQ–2012–011. 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–NASDAQ–2012–011 and should be submitted on or before February 21, 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

[7] Securities Exchange Act Release No. 65104 (August 11, 2011), 76 FR 51076 (August 17, 2011) (SR–NASDAQ–2011–116).

[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).

[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. 34–66218; File No. SR–NYSE–2012–01]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Establish an NYBX Immediate-or-Cancel Order

January 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on January 11, 2012, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 proposes to amend NYSE Rule 1600 to establish an Immediate or Cancel (''IOC'') order that would execute exclusively against contra-side liquidity in the Exchange's Display Book ® (''DBK'') and/or in the New York Block Exchange SM (''NYBX'' SM or ''Facility'') (''NYBX IOC order''). 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1600 to establish an NYBX IOC order.[3]

As proposed, an NYBX IOC order would be a limit order to buy or sell that is designated as IOC and that would be cancelled back to the User if not immediately eligible to execute, in whole or in part, exclusively against contra-side liquidity in the DBK and/or NYBX Facility that is at or within the NBBO. Any unexecuted portion of an NYBX IOC would not be routed elsewhere for execution, would not be placed on the DBK, would not otherwise remain in the NYBX Facility, would not trade through protected quotations of another market, but instead would be cancelled back to the User. NYBX IOC orders, like all other NYBX orders, must be entered with a minimum size of at least one round lot. Subject to these conditions, the NYBX IOC order would be subject to order processing set forth in Rules 1600(d)(1) and 1600(d)(1)(C)(i).

As proposed, NYBX IOC orders would be entered in the same manner as other NYBX orders, as provided under Rule 1600(c)(1), and would be required to contain the order parameters listed in Rule 1600(c)(3)(A). However, the optional time in force order parameters of Rule 1600(c)(3)(B)(i) would not be applicable because an NYBX IOC order would be cancelled if not executed immediately. Furthermore, Users would not be permitted to designate a Minimum Triggering Volume Quantity (''MTV'') for NYBX IOC orders entered into the NYBX Facility.

The NYBX Facility would apply the order execution process that is set forth in Rule 1600(d)(1)(C)(i) to NYBX IOC orders, including that an NYBX IOC order may execute at multiple price points that may be available in the DBK and NYBX Facility that are within the limit price of the NYBX IOC order. Because by its terms, the proposed NYBX IOC order does not route to other markets, have an MTV, or leave a residual in the NYBX Facility, by their terms, the order execution processing rules set forth in Rule 1600(d)(1)(C)(ii)–(vi) and Rule 1600(d)(1)(D) are inapplicable to the order processing of an NYBX IOC order. In a situation in which the size of the NYBX IOC order is less than the total available contra side liquidity that is potentially executable within the limit price in the NYBX Facility and the DBK, the existing ''tie breaker'' rules set forth in Rule 1600(d)(1)(C)(i) for routing decision purposes will provide that an execution in the DBK will have priority over an execution at the same price in the Facility.

For example, if a buy NYBX IOC order for 1,000 shares arrives at the Facility with a limit of $10.05, the Facility will review the available contra-side liquidity in the DBK (both displayed and undisplayed) and the NYBX Facility. Assuming the contra-side liquidity in the DBK is 300 shares at $10.04 (undisplayed), 200 shares at $10.05 (NBO displayed), and 200 shares at $10.05 (undisplayed) and in the NYBX Facility is 200 shares at $10.05, the NYBX IOC buy order would simultaneously be routed to DBK as 300 shares at $10.04 and 400 shares at $10.05, and 200 shares would execute in the Facility at $10.05 for a total execution of 900 shares. The remaining 100 shares of the buy NYBX IOC order would be cancelled. Assuming the buy NYBX IOC order is instead for 700 shares, pursuant to the tie-breaker rule in Rule 1600(d)(1)(C)(i), the full volume of the order would route to the DBK, 300 shares at $10.04 and 400 shares at $10.05, and the NYBX Facility's 200 share contra-side liquidity at $10.05 would not be filled.

Under no circumstances would an NYBX IOC order be routed to another market center. For example, if another automated trading center is displaying a better price than either the NYBX Facility or DBK, and an execution in the NYBX Facility or DBK would result in a trade through in violation of Regulation NMS, the NYBX IOC order will be immediately cancelled back to the User. Similarly, in a situation where another automated trading center is displaying prices that are the same or inferior to prices in the DBK or NYBX Facility, and routing is not required by Regulation NMS, the NYBX IOC order will execute within the DBK and/or the NYBX Facility without regard to such same or inferior-priced orders in another automated trading center.

The Exchange also proposes to make certain technical changes to NYSE Rule 1600. First, the Exchange proposes to amend Rule 1600(g) to add references to trading pauses in individual securities, as provided for under NYSE Rule 80C. Second, because the Exchange has eliminated the class of market participants formerly known as Registered Competitive Market Makers, the Exchange proposes to delete Rule 1600(h)(3), which is no longer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange proposes to define the NYBX IOC order type in proposed Rule 1600(c)(2)(D).

applicable.[4] Third, the Exchange proposes to clarify within Rule 1600(b)(2)(D) that NYBX orders are defined within Rule 1600(c)(2), not only within Rule 1600(c)(2)(A) as is currently reflected.

The Exchange proposes to announce via Trader Update the implementation date of this proposed rule change, which will be no later than 30 days after the publication of the approval order in the **Federal Register**.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the proposed rule change would improve the quality of the market by providing NYBX Users with greater control over and flexibility with respect to their orders by allowing for the entry of IOC orders in the NYBX Facility that would execute exclusively against contra-side liquidity in the DBK and the NYBX Facility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–01 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1941 Filed 1–27–12; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 60356 (July 21, 2009), 74 FR 37281 (July 28, 2009) (SR–NYSE–2009–08) (Rescinding Rules 110 and 107A, which established the roles of Competitive Traders and Registered Competitive Market Makers).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66231; File No. SR–EDGA–2011–40]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Order Granting Approval of Proposed Rule Change Amending EDGA Rule 11.9

January 24, 2012.

On December 2, 2011, EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend certain existing routing options contained in Rule 11.9. The proposed rule change was published for comment in the **Federal Register** on December 14, 2011.[3] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

The Exchange proposes to amend several routing options contained in Rule 11.9(b)(3) to allow Users more discretion if shares remain unexecuted after routing. In particular, Rule 11.9(b)(3) will provide that Users may elect that any remainder of an order be posted to the EDGX Exchange, Inc. (''EDGX'') for any of the routing options listed in the rule, except those in paragraphs (a) and (n)–(q).[4] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65911 (December 8, 2011), 76 FR 77877 (''Notice'').

[4] Routing options listed in Rules 11.9(b)(3)(a) and (n)–(q) are not altered as a result of this proposed rule change. The routing option in Rule 11.9(b)(3)(a) already posts to EDGX and no modification to the rule is needed as no discretion is provided to the User. The routing options in Rules 11.9(b)(3)(n)–(q) do not have the option to post the remainder of an order to EDGX. For a more detailed discussion of the specific proposed changes to the text of EDGA Rule 11.9 allowing Users to elect that any remainder of an order be posted to EDGX for any of the routing options listed in the rule, except

Continued

Exchange believes the proposed modification of the routing options will provide market participants with greater flexibility in routing orders without having to develop their own complicated routing strategies. In addition, the varied routing options allow Users to take primary advantage of EDGA's low cost fee structure to remove liquidity on EDGA and if applicable, other destinations, while retaining the option of posting the remainder of the order to EDGX.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the proposed change is intended to provide market participants with greater flexibility in routing orders, to provide additional clarity and specificity to the Exchange's rulebook regarding routing strategies, and to further enhance transparency with respect to Exchange routing offerings.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–EDGA–2011–40), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

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those in paragraphs (a) and (n)–(q), *see* the Notice, *supra* note 3.

[5] 15 U.S.C. 78f.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66228; File No. SR–EDGX–2012–01]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program Until July 31, 2012

January 24, 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 11, 2012, the EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 proposes to amend EDGX Rule 11.14 to extend the operation of the single stock circuit breaker pilot program (the ''Pilot'') pursuant to the Rule until July 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGX Rule 11.14 to extend the operation of a Pilot that allows the Exchange to provide for uniform market-wide trading pause standards for NMS stocks through July 31, 2012.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any NMS stock when the primary listing market for such stock issues a trading pause in such NMS stock. The Exchange will pause trading in such security until trading has resumed on the primary listing market.

EDGX Rule 11.14 was approved by the Commission on June 10, 2010 on a Pilot basis to end on December 10, 2010.[3] The Pilot was subsequently extended until April 11, 2011.[4] The Pilot was then further extended through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] The Pilot was then extended through January 31, 2012.[6]

In its initial filing to adopt EDGX Rule 11.14, the Exchange stated that the original Pilot list of securities was all securities included in the S&P 500® Index (''S&P 500''). The Exchange also noted in that filing that it would continue to assess whether additional securities needed to be added or removed from the Pilot list and whether the parameters of the rule needed to be modified to accommodate trading characteristics of different securities. As noted in comment letters to the initial filing to adopt EDGX Rule 11.14, concerns were raised that including only securities in the S&P 500 in the Pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the Pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGX–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63507 (December 9, 2010) (SR–EDGX–2010–22), 75 FR 78787 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64205 (April 6, 2011) (SR–EDGX–2011–10), 76 FR 20417 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 65092 (August 10, 2011) (SR–EDGX–2011–23), 76 FR 50786 (August 16, 2011).

expand the list of Pilot securities to include securities in the Russell 1000 and specified ETPs to the Pilot beginning in September 2010.[7] The Exchange believed that adding these securities would address concerns that the scope of the Pilot may be too narrow, while at the same time recognizing that during the Pilot period, the markets would continue to review whether and when to add additional securities to the Pilot and whether the parameters of the rule should be adjusted for different securities.

As a result of consulting with other markets and the staff of the Commission, the Exchange subsequently included all NMS stocks within the Pilot that were not already included therein.[8] In particular, the additional stocks were those not included in the S&P 500, Russell 1000 Index, or specified ETPs, and therefore were more likely to be less liquid securities or securities with lower trading volumes. The Exchange stated that it would continue to assess whether the parameters for invoking a trading pause continued to be appropriate and whether the parameters should be modified.

The Exchange believes that an extension of the Pilot through July 31, 2012 would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in NMS stocks. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the prior months, and that the Exchange will further assess the effect of the Pilot on the market or whether other initiatives should be adopted in lieu of the current Pilot. Therefore, the Exchange requests an extension of the Pilot through July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the previous months, and that the extension of the Pilot will allow the Exchange to further assess the effect of the Pilot on the market or whether other initiatives should be adopted in lieu of the current Pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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–EDGX–2012–01 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–EDGX–2012–01. This file number

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGX–2010–05), 75 FR 56618 (September 16, 2010).

[8] *See* Securities Exchange Act Release No. 64375 (June 23, 2011) (SR–EDGX–2011–14), 76 FR 38243 (June 29, 2011).

[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).

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–EDGX–2012–01 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1917 Filed 1–27–12; 8:45 am]

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[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66227; File No. SR–EDGA–2012–01]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.14 To Extend the Operation of the Single Stock Circuit Breaker Pilot Program Until July 31, 2012

January 24, 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 11, 2012, the EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of the single stock circuit breaker pilot program (the ''Pilot'') pursuant to the Rule until July 31, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend EDGA Rule 11.14 to extend the operation of a Pilot that allows the Exchange to provide for uniform market-wide trading pause standards for NMS stocks through July 31, 2012.

Background

Pursuant to Rule 11.14, the Exchange is allowed to pause trading in any NMS stock when the primary listing market for such stock issues a trading pause in such NMS stock. The Exchange will pause trading in such security until trading has resumed on the primary listing market.

EDGA Rule 11.14 was approved by the Commission on June 10, 2010 on a Pilot basis to end on December 10, 2010.[3] The Pilot was subsequently extended until April 11, 2011.[4] The Pilot was then further extended through the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] The Pilot was then extended through January 31, 2012.[6]

In its initial filing to adopt EDGA Rule 11.14, the Exchange stated that the original Pilot list of securities was all securities included in the S&P 500® Index (''S&P 500''). The Exchange also noted in that filing that it would continue to assess whether additional securities needed to be added or removed from the Pilot list and whether the parameters of the rule needed to be modified to accommodate trading characteristics of different securities. As noted in comment letters to the initial filing to adopt EDGA Rule 11.14, concerns were raised that including only securities in the S&P 500 in the Pilot rule was too narrow. In particular, commenters noted that securities that experienced volatility on May 6, 2010, including ETFs, should be included in the Pilot.

In response to these concerns, various exchanges and national securities associations collectively determined to expand the list of Pilot securities to include securities in the Russell 1000 and specified ETPs to the Pilot beginning in September 2010.[7] The Exchange believed that adding these securities would address concerns that the scope of the Pilot may be too narrow, while at the same time recognizing that during the Pilot period, the markets would continue to review whether and when to add additional securities to the Pilot and whether the parameters of the rule should be adjusted for different securities.

As a result of consulting with other markets and the staff of the Commission, the Exchange subsequently included all NMS stocks within the Pilot that were not already included therein.[8] In particular, the

[3] *See* Securities Exchange Act Release No. 62252 (June 10, 2010) (SR–EDGA–2010–01), 75 FR 34186 (June 16, 2010).

[4] *See* Securities Exchange Act Release No. 63514 (December 9, 2010) (SR–EDGA–2010–23), 75 FR 78783 (December 16, 2010).

[5] *See* Securities Exchange Act Release No. 64204 (April 6, 2011) (SR–EDGA–2011–11), 76 FR 20394 (April 12, 2011).

[6] *See* Securities Exchange Act Release No. 65091 (August 10, 2011) (SR–EDGA–2011–24), 76 FR 50788 (August 16, 2011).

[7] *See* Securities Exchange Act Release No. 62884 (September 10, 2010) (SR–EDGA–2010–05), 75 FR 56618 (September 16, 2010).

[8] *See* Securities Exchange Act Release No. 64375 (June 23, 2011) (SR–EDGA–2011–15), 76 FR 38243 (June 29, 2011).

additional stocks were those not included in the S&P 500, Russell 1000 Index, or specified ETPs, and therefore were more likely to be less liquid securities or securities with lower trading volumes. The Exchange stated that it would continue to assess whether the parameters for invoking a trading pause continued to be appropriate and whether the parameters should be modified.

The Exchange believes that an extension of the Pilot through July 31, 2012 would continue to promote uniformity regarding decisions to pause trading and continue to reduce the negative impacts of sudden, unanticipated price movements in NMS stocks. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the prior months, and that the Exchange will further assess the effect of the Pilot on the market or whether other initiatives should be adopted in lieu of the current Pilot. Therefore, the Exchange requests an extension of the Pilot through July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements. The Exchange believes that the Pilot is working well, that it has been infrequently invoked during the previous months, and that the extension of the Pilot will allow the Exchange to further assess the effect of the Pilot on the market or whether other initiatives should be adopted in lieu of the current Pilot.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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.

[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).

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–EDGA–2012–01 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–EDGA–2012–01. 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

[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).

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–EDGA–2012–01 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1916 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66230; File No. SR–NASDAQ–2012–008]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding a Clerical Change to Nasdaq Rule 5730

January 24, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 11, 2012, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to make clerical corrections to correct cross references in Rule 5730 of the Nasdaq rulebook. Nasdaq proposes to implement the proposed rule change immediately.

The text of the proposed rule change is available on Nasdaq's Web site *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to make clerical corrections to update certain cross-references in Rules 5730(b)(2) and (b)(3). Nasdaq incorrectly changed these cross-references when the listing rules were relocated from the Rule 4000 Series of the Nasdaq Rulebook to the Rule 5000 Series[3] and they now reference rules that do not exist. This rule filing will correct those cross-references. The Exchange is not making any substantive changes to Rule 5730.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is consistent with these provisions in that it will eliminate confusion about Nasdaq rules by correcting inaccurate cross-references to rules that have been renumbered, without changing the substance of the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(3) thereunder,[7] Nasdaq has designated this proposal as one that is concerned solely with the administration of the self-regulatory organization. Accordingly, Nasdaq believes this proposal should become immediately effective.

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–NASDAQ–2012–008 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–NASDAQ–2012–008. 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

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NASDAQ–2012–008 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1892 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66226; File No. SR–BX–2012–004]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

January 24, 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 12, 2012, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of recent amendments to Rule 11890, concerning clearly erroneous transactions, so that the pilot will now expire on July 31, 2012.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

11890. Clearly Erroneous Transactions

The provisions of paragraphs (C), (c)(1), (b)(i), and (b)(ii) of this Rule, as amended on September 10, 2010, shall be in effect during a pilot period set to end on *July 31, 2012* [January 31, 2012]. If the pilot is not either extended or approved permanent by *July 31, 2012* [January 31, 2012], the prior versions of paragraphs (C), (c)(1), and (b) shall be in effect.

(a)–(f) No change.

* * * * *

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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the Exchange, together with related rule changes of the BATS Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc., to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[4] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[5] On August 5, 2011, the Exchange filed an immediately effective filing removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[6] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 11890 so that it would continue to operate in the same manner after changes to the single stock trading pause process became effective.[7]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[8] which requires the rules of an exchange to promote just and equitable

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63490 (December 9, 2010), 75 FR 78299 (December 15, 2010) (SR–BX–2010–086).

[5] Securities Exchange Act Release No. 64240 (April 7, 2011), 76 FR 20732 (April 13, 2011) (SR–BX–2011–019).

[6] Securities Exchange Act Release No. 65059 (August 9, 2011), 76 FR 50522 (August 15, 2011) (SR–BX–2011–054).

[7] Securities Exchange Act Release No. 65105 (August 11, 2011), 76 FR 51108 (August 17, 2011) (SR–BX–2011–056).

[8] 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) [9] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [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–BX–2012–004 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–BX–2012–004. 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–BX–2012–004 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1886 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[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).

[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. 34–66224; File No. SR–Phlx–2012–08]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Period of Amendments to the Clearly Erroneous Rule

January 24, 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 12, 2012, NASDAQ OMX PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period of amendments to Rule 3312, concerning clearly erroneous transactions, so that the pilot will now expire on July 31, 2012.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

Rule 3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended by SR–Phlx–2010–125, shall be in effect during a pilot period set to end on *July 31, 2012*[January 31, 2012]. If the pilot is not either extended or approved permanent by *July 31, 2012*[January 31, 2012], the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect.

(a)–(f) No change.

* * * * *

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

On September 10, 2010, the Commission approved, for a pilot period to end December 10, 2010, a proposed rule change submitted by the BATS Exchange, Inc., NASDAQ OMX BX, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., International Securities Exchange LLC, The NASDAQ Stock Market LLC, New York Stock Exchange LLC, NYSE Amex LLC, NYSE Arca, Inc., and National Stock Exchange, Inc. (collectively, the ''Exchanges''), to amend certain of their respective rules to set forth clearer standards and curtail discretion with respect to breaking erroneous trades.[3] The changes were adopted to address concerns that the lack of clear guidelines for dealing with clearly erroneous transactions may have added to the confusion and uncertainty faced by investors on May 6, 2010. In connection with its resumption of trading of NMS Stocks through PSX, the Exchange amended Rule 3312 to conform it to the newly-adopted changes to the Exchanges' clearly erroneous rules, so that it could participate in the pilot program.[4] On December 7, 2010, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on April 11, 2011.[5] On March 31, 2011, the Exchange filed an immediately effective filing to extend the existing pilot program for four months, so that the pilot would expire on the earlier of August 11, 2011 or the date on which a limit up/limit down mechanism to address extraordinary market volatility, if adopted, applies.[6] On August 5, 2011, the Exchange filed an immediately effective filing removed language from the rule that tied the expiration of the pilot to the adoption of a limit up/limit down mechanism to address extraordinary market volatility, and further extended the pilot period, so that the pilot would expire on January 31, 2012.[7] On August 8, 2011, the Exchange filed an immediately effective filing to amend Rule 3312 so that it would continue to operate in the same manner after changes to the single stock trading pause process became effective.[8]

The Exchange believes that the pilot program has been successful in providing greater transparency and certainty to the process of breaking erroneous trades. The Exchange also believes that an additional extension of the pilot is warranted so that it may continue to monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.

Accordingly, the Exchange is filing to further extend the pilot program until July 31, 2012.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[9] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule meets these requirements in that it promotes transparency and uniformity across markets concerning decisions to break erroneous trades.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)

[3] Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010).

[4] Securities Exchange Act Release No. 63023 (September 30, 2010), 75 FR 61802 (October 6, 2010).

[5] Securities Exchange Act Release No. 63491; (December 9, 2010), 75 FR 78297 (December 15, 2010).

[6] Securities Exchange Act Release No. 64239 (April 7, 2011), 76 FR 20789 (April 13, 2011) (SR–Phlx–2011–45).

[7] Securities Exchange Act Release No. 65058 (August 9, 2011), 76 FR 50519 (August 15, 2011) (SR–Phlx–2011–110).

[8] Securities Exchange Act Release No. 65106 (August 11, 2011), 76 FR 51079 (August 17, 2011) (SR–Phlx–2011–114).

[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).

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–Phlx–2012–08 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–Phlx–2012–08. 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–Phlx–2012–08 and should be submitted on or before February 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–1884 Filed 1–27–12; 8:45 am]

BILLING CODE 8011–01–P

[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).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7778]

Culturally Significant Objects Imported for Exhibition Determinations: ''Children of the Plumed Serpent: The Legacy of Quetzalcoatl in Ancient Mexico''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Children of the Plumed Serpent: The Legacy of Quetzalcoatl in Ancient Mexico,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, CA from on or about April 1, 2012, until on or about July 1, 2012, and then exhibition or display of the exhibit at the Dallas Museum of Art, Dallas, TX from on or about July 29, 2012 to on or about November 25, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 24, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–1955 Filed 1–27–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7777]

In the Matter of the Review of the Designation of Aum Shinrikyo (aka AUM, Aleph and Other Aliases); As a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C))

(''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designation of the aforementioned organization as a foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: January 23, 2012.

Hillary Rodham Clinton,

Secretary of State, Department of State.

[FR Doc. 2012–1952 Filed 1–27–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

[Docket No. FRA 2012–0006–N–3]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, 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 describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on November 14, 2011 (76 FR 70532).

DATES: Comments must be submitted on or before February 29, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), 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 14, 2011, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. 76 FR 70532. FRA received no comments in response to this notice.

Before OMB decides whether to approve a proposed collection 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 summary below describes the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Inspection and Maintenance of Steam Locomotives (Formerly Steam Locomotive Inspection).

OMB Control Number: 2130–0505.

Type of Request: Extension with change of a previously approved information collection.

Affected Public: 82 Steam Locomotive Owners/Operators.

Abstract: The Locomotive Boiler Inspection Act (LBIA) of 1911 required each railroad subject to the Act to file copies of its rules and instructions for the inspection of locomotives. The original LBIA was expanded to cover the entire steam locomotive and tender and all its parts and appurtenances. This Act then requires carriers to make inspections and to repair defects to ensure the safe operation of steam locomotives. The collection of information is used by tourist or historic railroads and by locomotive owners/operators to provide a record for each day a steam locomotive is placed in service, as well as a record that the required steam locomotive inspections are completed. The collection of information is also used by FRA Federal inspectors to verify that necessary safety inspections and tests have been completed and to ensure that steam locomotives are indeed ''safe and suitable'' for service and are properly operated and maintained.

Form Number(s): FRA Form No.1; FRA Form No. 2; FRA Form No. 3; FRA Form No. 4; FRA Form No. 5; and FRA Form No. 19.

Annual Estimated Burden Hours: 18,865 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. Comments may also be sent electronically via email to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov.*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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 24, 2012.

Michael Logue,

Acting Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. 2012–1958 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Kona International Airport at Keahole, Keahole, North Kona, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FM) announces its findings on the noise compatibility program submitted by the Hawaii State Department of Transportation, Airports Division (DOT–A) under the provisions of 49 U.S.C. 47501 et seq. (formerly the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 Code of Federal Regulations (CFR) part 150 (hereinafter referred to as ''Part 150'') On January 12, 2010, the FM determined that the noise exposure maps submitted by the DOT–A under Part 150 were in compliance with applicable requirements. On April 20, 2011 the FAA approved the Kona International Airport at Keahole noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed.

DATES: *Effective Date:* The effective date of the FM's approval of the Noise Compatibility Program for Kona International Airport at Keahole is April 20, 2011.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Environmental Protection Specialist, FAA Western-Pacific Region, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii, telephone number (808) 541–1232. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Kona International Airport at Keahole, effective April 20, 2011. Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979, as amended (herein after referred to as the ''Act'') [recodified as 49 U.S.C. 47504], an airport operator who has previously submitted a Noise Exposure Map may submit to the FM a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FM does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation a the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Honolulu, Hawaii.

The DOT–A submitted to the FAA on April 27, 2009, the Noise Exposure Maps for evaluation. The FAA determined that the Noise Exposure Maps for Kona International Airport at Keahole were in compliance with applicable requirements on January 12, 2010. Notice of this determination was published in the **Federal Register** on January 25, 2010 (Volume 75/No. 15/ pages 3959–3960).

The Kona International Airport at Keahole study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. 47504 (formerly Section 104(b) of the Act). The FM began its review of the program on October 27, 2010, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The Noise Compatibility Program recommended one Noise Abatement Element, eight Land Use Management Elements and three Program Management Elements. The FM completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program was approved, by the Manager of the Airports Division, Western-Pacific Region, effective April 20, 2011.

Approval was granted for one Noise Abatement Element, eight Land Use Management Elements and three Program Management Elements. The approved measures included: a pilot education program; maintaining an established communication process between DOT–A, Hawaii County, and Hawaii State Land Use Commission for the review of proposed development near the airport; DOT–A to encourage Hawaii County to revise the Environmental Quality Section of Hawaii County General Plan to include additional policies related to airport land use compatibility; establish an Airport Influence Area for Kona International Airport to define the area that land use compatibility policies would apply; DOT–A to encourage

Hawaii County to adopt an airport compatibility checklist for discretionary review of projects within its vicinity, maintain compatible zoning designations within the 2013 60 DNL noise contour; require the dedication of noise and avigation easements through the subdivision approval process; adopt fair disclosure regulations to notify property owners of the noise generated by aircraft operations; adopt an airport noise overlay zone; monitor implementation of the Part 150 Noise Compatibility Program; updated the Noise Exposure Maps and Noise Compatibility Programs as necessary; and acquire and implement a noise monitoring system.

The FAA determinations are set forth in detail in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on April 20, 2011. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Kona International Airport at Keahole. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports/environmental/airport_noise/part_150/states/*.

Issued in Hawthorne, California, on December 12, 2011.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region, AWP–600.

[FR Doc. 2012–1805 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA)

Notice of Opportunity for Public Comment on Surplus Property Release at Laurinburg-Maxton Airport, Maxton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(c), notice is being given that the FAA is considering a request from the Laurinburg-Maxton Airport Commission to waive the requirement that approximately 322.24 acres of airport property, located at the Laurinburg-Maxton Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before February 29, 2012.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address:

Atlanta Airports District Office Attn: Rusty Nealis, Program Manager, 1701 Columbia Ave., Suite 2–260, Atlanta, GA 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to JoAnn Gentry, Executive Director, Laurinburg-Maxton Airport Commission at the following address:

Laurinburg-Maxton Airport Commission, 16701 Airport Road, Maxton, NC 28364.

FOR FURTHER INFORMATION CONTACT: Rusty Nealis, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Campus Building, Suite 2–260, Atlanta, GA 30337–2747, (404) 305–7142. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by the Laurinburg-Maxton Airport Commission to release approximately 322.24 acres of airport property at the Laurinburg-Maxton Airport. The property consists of one parcel located on the south side of Skyway Church Road (State Road 1435). This property is currently shown on the approved Airport Layout Plan as non-aeronautical use land and the proposed use of this property is compatible with airport operations. The City will ultimately sell the property for future industrial use with proceeds of the sale providing funding for future airport development.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the request, notice and other documents germane to the request in person at the Laurinburg-Maxton Airport.

Issued in Atlanta, Georgia, on January 20, 2012.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 2012–1803 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Pennington County, SD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed road improvements on South Rochford Road in Pennington County, South Dakota.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Barber, Environmental Specialist, FHWA, 116 East Dakota Avenue, Suite A, Pierre, SD 57501, (605) 226–7326; Mr. Terry Keller, Environmental Supervisor, Project Development, South Dakota Department of Transportation, 700 E. Broadway Avenue, Pierre, SD 57501, (605) 773–3721; Mr. Heine Junge, Highway Superintendent, Pennington County Highway Department, 3601 Cambell Street, Rapid City, SD 57701 (605) 394–2166. Further information can be found and comments can be submitted via the project Web site at *http://www.southrochfordroad.com.*

SUPPLEMENTARY INFORMATION:

Background

The FHWA, in cooperation with the SDDOT and Pennington County, South Dakota, will prepare an Environmental Impact Statement (EIS) on a proposal for roadway improvements on South Rochford Road in Pennington County, South Dakota. The proposed project would involve roadway improvements to South Rochford Road for approximately 10 miles between the Town of Rochford and the intersection of South Rochford Road and Deerfield Road.

The proposed project is considered necessary to improve year-round access to the Town of Rochford from the Deerfield Lake area. The existing roadway is difficult to maintain with a gravel surface, steep grades, drainage issues, and curvilinear alignment. Alternatives under consideration include: (1) No action; (2) roadway improvements along the existing alignment; and (3) roadway improvements on a new alignment. The proposed work would include reconstructing the two-lane roadway, providing an all-weather surface, and improving the drainage and associated roadway structures. Adjusting existing utilities and acquisition of right-of-way (ROW) may be necessary.

Based on preliminary environmental analysis, it is anticipated that the proposed project may require the following Federal permits: Section 404 Permit for filling/dredging water of the United States and Section 401 Water Quality Certification. A Special Use Permit may be required from the U.S. Forest Service.

An agency scoping meeting and public scoping/information meeting are planned with the meetings scheduled between February and June of 2012.

Letters describing the proposed action and soliciting comments will be sent to the appropriate federal, state, and local agencies; tribes; and private organizations and citizens who are known to be interested in the proposed project. Public input will be sought throughout the proposed project through a series of public meetings. A Draft EIS will be prepared and a public hearing will be held. Public notice will be given regarding the time and place of the public meetings and public hearing.

If a build alternative is chosen as the preferred alternative, construction is anticipated to begin in 2015 or 2016. To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be submitted through the project Web site at *http://www.southrochfordroad.com* or directed to any of the persons identified above at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT**.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: January 19, 2012.

Marion Barber,

Environmental Specialist, Federal Highway Administration, Pierre, South Dakota.

[FR Doc. 2012–1725 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0011]

NHTSA Activities Under the United Nations World Forum for the Harmonization of Vehicle Regulations 1998 Global Agreement

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

ACTION: Notice of activities under the 1998 Global Agreement and request for comments.

SUMMARY: NHTSA is publishing this notice to inform the public of the scheduled upcoming meetings under the World Forum for the Harmonization of Vehicle Regulations (WP.29) and its Working Parties of Experts for calendar year 2012. This notice will provide the public with the most recent status of activities under the Program of Work of the 1998 Global Agreement and requests comments on various aspects of these activities. Publication of this information is in accordance with NHTSA's Statement of Policy regarding Agency Policy Goals and Public Participation in the Implementation of the 1998 Global Agreement on Global Technical Regulations.

DATES: Written comments may be submitted to this agency within 30 days of publication of this notice.

ADDRESSES: You may submit comments identified by DOT Docket No. NHTSA–2012–0011 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: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–(800) 647–5527.
- *Fax:* (202) 493–2251.

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://Docketlnfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Ezana Wondimneh, Chief, International Policy and Harmonization Division (NVS–133), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; Telephone: (202) 366–0846, fax (202) 493–2280.

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I. Background

On August 23, 2000, NHTSA published in the **Federal Register** (65 FR 51236) a statement of policy regarding the Agency's policy goals and public participation in the implementation of the 1998 Global Agreement, indicating that each calendar year the Agency would provide a list of scheduled meetings of the World Forum for the Harmonization of Vehicle Regulations (WP.29) and the Working Parties of Experts, as well as meetings of the Executive Committee of the 1998 Global Agreement (AC.3).[1] Further, in that policy statement, the Agency stated that it would keep the public informed about the Agreement's Program of Work (i.e., subjects designated for Global Technical Regulation (GTR) development), as well as maintain a list of candidate GTRs that have been formally proposed by a contracting party and referred to a working party of experts, including those draft GTRs already developed and referred by a Working Party of Experts to AC.3 for establishment under the Agreement.

In keeping with this policy, NHTSA has notified the public about the status of activities under the 1998 Global Agreement and sought comments on

[1] This statement of policy is codified in Appendix C of Part 553 of Title 49 of the CFR.

various issues and proposals through a series of **Federal Register** notices published beginning July 2000.[2] This notice provides an update of the Agency's activities under the 1998 Global Agreement.

A. WP.29 and Its Working Parties of Experts

1. WP.29

WP.29 was established on June 6, 1952 as the Working Party on the Construction of Vehicles, a subsidiary body of the Inland Transport Committee (ITC) of the United Nations Economic Commission for Europe (UNECE). In March 2000, WP.29 became the ''World Forum for Harmonization of Vehicle Regulations (WP.29).'' The objective of the WP.29 is to initiate and pursue actions aimed at the worldwide harmonization or development of technical regulations for vehicles.[3] Providing uniform conditions for periodical technical inspections and strengthening economic relations worldwide, these regulations are aimed at:

—Improving vehicle safety;
—Protecting the environment;
—Promoting energy efficiency and
—Increasing anti-theft performance.

WP.29 currently administers three UNECE Agreements:

1. UNECE 1958 Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions;

2. UNECE 1998 Agreement concerning the Establishing of Global Technical Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles;

3. UNECE 1997 Agreement concerning the Adoption of Uniform Conditions for Periodical Technical Inspections of Wheeled Vehicles and the Reciprocal Recognition of such Inspections.

Four committees coordinate the activities of WP.29:

AC.1—Administrative Committee for 1958 Agreement
AC.2—Administrative Committee for the Coordination of Work
AC.3—Executive Committee for 1998 Agreement
AC.4—Administrative Committee for 1997 Agreement

AC.1, AC.3 and AC.4 are the Administrative/Executive Committees for the Agreements administered by WP.29, constituting all Contracting Parties of the respective Agreements.

The coordination of work of the World Forum is managed by a Steering Committee (AC.2) comprising the Chairperson and Secretariat of WP.29, the Chairpersons of the Executive Committees of the 1958, 1997 and 1998 Agreements administered by WP.29, the representatives of the European Community, Japan and the United States of America, and the Chairpersons of WP.29's subsidiary bodies (GRs or Working Parties). The duties of AC.2 are to develop and recommend to WP.29 a Program of Work, to review the reports and recommendations of WP.29's subsidiary bodies, to identify items that require action by WP.29 and the time frame for their consideration, and to provide recommendations to WP.29.

2. Working Parties of Experts

The permanent subsidiary bodies of WP.29, also known as GRs (Groups of Rapporteurs), assist the World Forum for Harmonization of Vehicle Regulations in researching, analyzing and developing requirements for technical regulations in the areas of their expertise. There are six subsidiary bodies:

Working Party on Lighting and Light-Signaling (GRE);

Working Party on Brakes and Running Gear (GRRF);

Working Party on Passive Safety (GRSP);

Working Party on General Safety Provisions (GRSG);

Working Party on Pollution and Energy (GRPE);

Working Party on Noise (GRB).

Each subsidiary body consists of people whose expertise is relevant to the area covered by the body. All the proposals to WP.29 for new regulations or amendments to existing UNECE regulations are referred by the World Forum to its subsidiary bodies for preparation of technical recommendations. In view of the significance of the role of these subsidiary bodies, these have been given permanent status under UNECE and have been renamed as ''Working Parties.'' More specifically, the working parties and their areas of expertise are outlined below.

Active Safety of Vehicles and Their Parts (Crash Avoidance)

Working Party on Lighting and Light-Signaling (GRE)

Working Party on Brakes and Running Gear (GRRF)

The regulations in this area seek to improve the behavior, handling and equipment of vehicles so as to decrease the likelihood of a road crash. Some of the regulations seek to increase the ability of drivers to detect and avoid hazardous circumstances. Others seek to increase the ability of drivers to maintain control of their vehicles. Specific examples of current regulations include ones applying to lighting and light-signaling devices, braking and running gear, including steering, tires and rollover stability. This area of technology is rapidly changing. The advent of advanced technologies (e.g., electronic, computer and communication) is providing opportunities for seeking new remedies that can help drivers avoid crashes.

Passive Safety (Crashworthiness)

Working Party on Passive Safety (GRSP)

The regulations in this area seek to minimize the risk and severity of injury for the occupants of a vehicle and/or other road users in the event of a crash. Extensive use is made of crash statistics to identify safety problems for which a regulation or amendment to an existing regulation is needed and define a proper cost/benefit approach when improving performance requirements in this area. This is important, given the overall impact of new requirements on vehicle construction, design and cost. Specific examples of current regulations include ones addressing the ability of the vehicle structure to manage crash energy and resist intrusion into the passenger compartment, occupant restraint and protection systems for children and adults, seat structure, glazing, door latches and door retention, pedestrian protection and for motorcycles and the quality of the protective helmet for the rider. This area of technology also is changing rapidly and becoming more complex. Examples include advanced protection devices that adjust their performance in response to the circumstances of individual crashes. In addition, changes in the vehicle population are raising issues of vehicle compatibility and aggressivity.

[2] The relevant **Federal Register** notices include: 65 FR 44565, 66 FR 4893, 68 FR 5333, 69 FR 60460, 71 FR 59582, 73 FR 7803, 73 FR 8743, 73 FR 31914, and 73 FR 5520.

[3] For general information about WP.29, see the document, ''World Forum for Harmonization of Vehicle Regulations (WP.29)—How It Works, How to Join It,'' available at *http://www.unece.org/index.php?id=2077*.

General Safety Considerations

Working Party on General Safety Provisions (GRSG)

The regulations in this area address vehicle and component features which are not directly linked to the above-mentioned subject areas. For example, windshield wipers and washers, controls and displays and glazing are grouped under this heading. Further, theft prevention and the considerations of public transport vehicles for which special expertise is needed in establishing their performance requirements are covered in this category.

Environmental Considerations

Working Party on Pollution and Energy (GRPE)

Working Party on Noise (GRB)

In general, the regulations in this area address questions of the pollution of the environment, noise disturbances and conservation of energy (fuel consumption).

Special Technical Considerations

Informal Working Groups (IWGs)

In some cases, a specific problem needs to be solved urgently or needs to be addressed by persons having a special expertise. In such situations, a special informal working group may be entrusted with the analysis of the problem and invited to prepare a proposal for a regulation. Although such cases have traditionally been kept to a minimum, the rapid development of complex new technologies is increasing the necessity for using this special approach.

II. List of Meetings of WP.29 and Its Working Parties of Experts

The following list shows the scheduled meetings of WP.29 and its subsidiary Working Parties of Experts for vehicle safety for calendar year 2012. In addition to these meetings, Working Parties of Experts may schedule, if necessary, IWG sessions outside their regular schedule in order to address technical matters specific to GTRs under consideration. The formation and timing of these groups are recommended by the sponsor and chair of the group and are approved by WP.29 and AC.3. The schedule and place of meetings are made available to interested parties in proposals and periodic reports which are posted on the Web site of WP.29, which can be found at: *http://www.unece.org/trans/main/welcwp29.html.*

2012 PROVISIONAL SCHEDULE OF MEETINGS OF WP.29 AND ITS WORKING PARTIES OF EXPERTS

January 17–20	Working Party on Pollution and Energy (GRPE) (63rd session).
February 07–09	Working Party on Noise (GRB) (55th session).
20–24	Working Party on Brakes and Running Gear (GRRF) (72nd session).
March 12	Administrative Committee for the Coordination of Work (AC.2) (108th session).
13–16	World Forum for Harmonization of Vehicle Regulations (WP.29) (156th session).
26–29	Working Party on Lighting and Light-Signaling (GRE) (67th session).
April 16–20	Working Party on General Safety Provisions (GRSG) (102nd session).
May 21–25	Working Party on Passive Safety (GRSP) (51st session).
June 05–08	Working Party on Pollution and Energy (GRPE) (64th session).
25	Administrative Committee for the Coordination of Work (AC.2) (109th session).
26–29	World Forum for the Harmonization of Vehicle Regulations (WP.29) (157th session).
September 03–05	Working Party on Noise (GRB) (56th session).
October 02–05	Working Party on General Safety Provisions (GRSG) (103rd session).
16–18	Working Party on Lighting and Light-Signaling (GRE) (68th session).
November 12	Administrative Committee for the Coordination of Work (AC.2) (110th session).
13–16	World Forum for the Harmonization of Vehicle Regulations (WP.29) (158th session).
December 11–14	Working Party on Passive Safety (GRSP) (52nd session).

III. Status of Activities Under the Program of Work of the 1998 Global Agreement

The current Program of Work of the 1998 Global Agreement is listed in the table below. Note that the items listed are for those related to vehicle safety only.

Working party of experts	Subject	Sponsoring contracting party	Chair of informal working group
WP.29	Exchange of Information Enforcement Working Group	USA	USA.
GRRF	GTR on Tires for Light Vehicles	France	UK.
GRSP	Amend.1 to GTR No. 1 (Door locks)	USA	N/A.
	Phase 2 of GTR No. 7 (Head Restraints)	Japan	UK.
	Phase 2 of GTR No. 9 (Pedestrian Safety)	Japan/Germany	Germany/Japan.
	GTR on Hydrogen Vehicles—Safety Sub-Group	USA/Germany/Japan	USA/Japan.
	GTR on Pole Side Impact	Australia	Australia.
	Exchange of Information on Harmonized side impact dummies	USA	USA.
	Electric Vehicles Safety GTR	USA/Japan/EC	USA/Japan.
GRB	GTR on Quiet Road Transport Vehicles	USA/Japan	TBD.

A. Status of Established GTRs Under the 1998 Global Agreement

• Pedestrian Safety

At the November 2008 session, WP.29 voted to establish [4] GTR 9 [5] on Pedestrian Safety. Implementation of the GTR by the contracting parties would improve pedestrian safety by requiring vehicle hoods and bumpers to absorb energy more efficiently in a 40 kilometer per hour (km/h) vehicle-to-pedestrian crash. Crashes at speeds up to that threshold account for more than 75 percent of crashes in which pedestrians are injured.

The GTR contains two sets of performance criteria applying to: (a) The hood; and (b) the front bumper. Unique test procedures address adult and child head and adult leg impact protection for each of the two crash scenarios. At the time GTR 9 was adopted, a legform impactor developed by TRL (Transport Research Laboratory, UK) was used to evaluate front bumper impact performance. However, WP.29 agreed to consider the future use of a newer legform impactor called Flex-PLI (Flexible Pedestrian Legform Impactor), which may be more biofidelic. At the May 2011 session of GRSP, NHTSA reported research results that raised concerns about the readiness of the Flex-PLI device. As a result, at its June 2011 session, WP.29 agreed to form a new IWG under the sponsorship of Germany and Japan to further refine the Flex-PLI device.

Due to this planned activity, NHTSA is reevaluating how it will proceed.

• Head Restraints

The GTR for head restraints (GTR 7) was established by WP.29 at its March 2008 Session. At that time, the GTR's dynamic test procedure, which is designed to evaluate whiplash injury protection, allowed the use of two optional test dummies (the Hybrid III and BioRID II). A full system whiplash evaluation test that incorporates the combined performance of the seat and head restraint uses the BioRID II dummy, which was not then available.

Therefore, in November 2009, WP.29 initiated a second phase of development for the GTR by forming a new IWG tasked with the development of a fully developed BioRID II test tool, including test procedures, injury criteria and associated corridors. If this work is completed by the end of 2012, WP.29 plans to vote on amending GTR 7 at its June 2013 session. As a result of this ongoing activity, NHTSA has decided to delay rulemaking to amend the Federal Motor Vehicle Safety Standard (FMVSS) to incorporate the GTR until the GTR is updated to reflect the phase two work currently underway.

• Door Locks

At its November 2004 session, WP.29 established the GTR for door locks and door retention components (GTR 1). On December 15, 2004, NHTSA issued a Notice of Proposed Rulemaking (NPRM) closely based on GTR 1 (69 FR 75020). Subsequently, the United States published two Final Rules on February 06, 2007 (72 FR 5385) and February 19, 2010 (75 FR 7370) incorporating the requirements of the GTR into the FMVSS. Through these rulemaking actions, the agency made minor changes to clarify the regulatory text. Furthermore, as the GTR was incorporated into ECE Regulation 11 under the 1958 Agreement, additional clarifications were recommended.

Consequently, WP.29 is planning to combine all of the outstanding proposed amendments into a single proposal for consideration at its March 2012 session. No further action by United States is required.

• Safety Glazing

At its March 2008 session, WP.29 established the GTR for safety glazing for motor vehicles and motor vehicle equipment (GTR 6). The GTR includes harmonized requirements and tests for the mechanical properties, optical qualities and environmental resistance of glazing.

NHTSA is currently in the process of preparing an NPRM to propose the adoption of the Safety Glazing GTR into the FMVSS.

• Motorcycle Controls and Displays

At its November 2011 session, WP.29 established by consensus vote the GTR for Motorcycle Controls and Displays. The effort is sponsored and chaired by Italy and aims to standardize current widely used motorcycle controls and display symbols. Standardizing these could help prevent the introduction of new unique identifying symbols, which may lead to rider confusion. The draft GTR includes 22 symbols. Of these, 17 are already included in the FMVSS. Some of these include the passing beam, manual choke, turn signal, horn, driving beam, transmission neutral, electric starter, fuel tank shutoff valve on/off, hazard warning, engine coolant temp, lighting switch control, position lamp and battery charging. The remaining five are not included in current U.S. standards and include front fog lamp, rear fog lamp, parking lamp, ABS and emissions failure warning.

Locational and operational requirements for controls are also addressed in the GTR. They include the front wheel brake control, rear wheel foot brake control, rear wheel hand brake control, clutch, foot selected manual gear shift control and hand selected manual gear shift control.

The GTR provisions for controls are consistent with the current FMVSS, but also allow several alternative requirements to accommodate existing requirements in other contracting parties' jurisdictions. The GTR also allows contracting parties to continue the use of unique text as an alternative to symbols or in combination with symbols as is currently permitted in the FMVSS.

B. New Proposals for the Development of GTRs

• Quiet Vehicles

In 2009, NHTSA published a report on the incident rates of crashes involving hybrid-electric vehicles and pedestrians under different scenarios.[6] The U.S. study, using crash data collected from several states, compared vehicle to pedestrian crash rates for hybrid electric-vehicles and vehicles with internal combustion engines (ICE). In the study, the agency found that there is an increased rate of pedestrian crashes for hybrid electric vehicles versus similarly sized ICE vehicles. In 2010, the agency published a second report that found that the overall sound levels for the hybrid-electric vehicles tested were lower at low speeds than for the peer ICE vehicles tested.[7]

The Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT), after studying the feasibility of alert sounds for electric and hybrid-electric vehicles, issued guidelines for pedestrian alert sounds in 2010. MLIT concluded that pedestrian alert sounds

[4] Under the 1998 Global Agreement, GTRs are established by consensus vote of the Agreement's contracting parties present and voting.

[5] While the 1998 Global Agreement obligates contracting parties that vote in favor of establishing a GTR to begin their domestic rulemaking process, it leaves the ultimate decision of whether they adopt the GTR to the parties themselves.

[6] ''Research on Quieter Cars and the Safety of Blind Pedestrians, A Report to Congress'' prepared by National Highway Traffic Safety Administration, U.S. Department of Transportation, October 2009. This report can be found at *http://www.nhtsa.gov/DOT/NHTSA/NVS/Crash%20Avoidance/Technical%20Publications/2010/RptToCongress091709.pdf.*

[7] Garay-Vega, Lisandra; Hastings, Aaron; Pollard, John K.; Zuschlag, Michael; and Stearns, Mary D., Quieter Cars and the Safety of Blind Pedestrians: Phase I, John A. Volpe National Transportation Systems Center, DOT HS 811 304 April 2010, available at *http://www.nhtsa.gov/DOT/NHTSA/NVS/Crash%20Avoidance/Technical%20Publications/2010/811304rev.pdf.*

should be required only on hybrid-electric vehicles that can run exclusively on an electric motor, electric vehicles and fuel-cell vehicles. MLIT guidelines require that electric and hybrid-electric vehicles generate a pedestrian alert sound whenever the vehicle is moving forward at any speed less than 20 km/h and when the vehicle is operating in reverse. The guidelines do not require vehicles to produce an alert sound when the vehicle is operating, but stopped, such as at a traffic light. Also, manufacturers are allowed to equip the vehicle with a switch to deactivate the alert sound temporarily.

WP.29 also determined that vehicles propelled in whole or in part by electric means, present a danger to pedestrians and consequently adopted guidelines covering alert sounds for electric and hybrid vehicles that are closely based on the Japanese guidelines at its March 2011 meeting. The guidelines were published as an annex to the UNECE Consolidated Resolution on the Construction of Vehicles (R.E.3).

Considering the international interest and work in this new area of safety, the United States proposed working on a new GTR, with Japan as co-sponsor, to develop harmonized pedestrian alert sound requirements for electric and hybrid-electric vehicles under the 1998 Global Agreement.[8] WP.29 is now working to develop a GTR that will consider international safety concerns and leverage expertise and research from around the world. Meetings of the working group are planned to take place regularly with periodic reporting to WP.29 until the expected establishment date for the new GTR in November 2014.

- Electric Vehicles

At the November 2011 session of WP.29, NHTSA, Japan and the European Commission proposed a road map for the establishment of a GTR for electric vehicles, which was endorsed by WP.29. A new IWG is expected to be formed in early 2012 to begin work to develop the GTR, which would apply to all types of hybrid and pure electric vehicles, their batteries, and other associated high risk components. To the extent possible, the GTR will include performance-based requirements and testing protocols designed to allow for innovation, while ensuring that the unique safety risks posed by electric vehicles are mitigated. The GTR will address the safety of high voltage electrical components, including lithium-ion and other types of batteries, their performance during normal use, after a crash event, and while recharging at a residence or other charging station.

C. Status of GTRs Under Development

- Hydrogen Fuel-Cell Vehicles

In June 2007, WP.29 adopted an Action Plan prepared by the co-sponsors (United States, Germany and Japan) to develop a GTR for compressed gaseous and liquefied hydrogen fuel vehicles.[9] Soon after, WP.29 formed an IWG to develop a GTR for these types of vehicles with the aim of attaining levels of safety equivalent to those for conventional gasoline-powered vehicles. The GTR is intended to cover the safety of hydrogen fuel containers, hydrogen fuel lines and their related components, as well as the safety of high-voltage components.

The IWG is nearing completion of its work, but has a number of issues outstanding. These include:

(1) Electrical Shock Barrier: The IWG is considering allowing the use of physical barriers (such as enclosures and insulation) as an optional method for manufacturers to use to prevent electrical shock to persons during vehicle use or after a crash event. NHTSA will make a decision pending the completion and analysis of the research results.

(2) Duration of the Localized Fire Test: This requirement in the GTR specifies the duration of a localized flame test that the hydrogen container must survive. Although the IWG has been targeting a duration of five minutes for this test, NHTSA has proposed that the duration be extended to 10 minutes because research data from Japan have shown that under certain circumstances, localized fires of the types hydrogen vehicles may experience in the real world can last as long as 10 minutes. The IWG will study the issue further before deciding on the ultimate duration time.

(3) Hydrogen Container Material Compatibility: The research for this critical item has not yet been completed and is expected to continue. Therefore, the IWG has agreed to recommend that the contracting parties continue to use their current regulations and standards, if any, until suitable harmonized provisions can be developed in a possible second phase of the GTR.

The draft GTR is scheduled to be completed and presented to WP.29 for a possible vote to establish it by December 2012.

- Light Vehicle Tires

The IWG for developing a GTR for light vehicle tires began its work in September 2006. This activity is sponsored by France and chaired by the UK. The GTR would apply to radial passenger and light truck tires designed to be used on vehicles with a gross mass of 10,000 pounds or less. The provisions would include five mandatory performance and labeling requirements (tire sidewall markings, tire dimensions, high speed performance, low pressure and endurance performance, and wet grip performance).

In addition, there would be two optional modules, with one containing a tire strength test and bead unseating resistance test, and the second containing a tire rolling sound emission test. During the course of the development of the GTR, it became apparent that the requirements for light truck tires would require more time to develop. It was therefore decided by WP.29 to split the work of the GTR into two phases. The first phase will cover passenger car tires only, and the second will address the light truck tires.

The first phase of the GTR is near completion with only the wet grip test remaining to be developed. WP.29 expects that the GTR will be ready for consideration and a vote to establish by the end of 2012.

- Pole Side Impact

WP.29 formed an IWG to develop a GTR for pole side impact protection in June 2010 under the sponsorship and chairmanship of Australia and held its first meeting in November 2010. The first tasks of the IWG included confirming the safety need for the GTR notwithstanding the increasing prevalence of the electronic stability control systems in the vehicle fleet and assessing potential candidate crash test procedures for the GTR. The GTR would

[8] The agency is taking this initiative in part because the Pedestrian Safety Enhancement Act requires the agency to issue a standard specifying performance requirements for an alert sound that enables visually-impaired and other pedestrians to reasonably detect EVs and HVs operating below their cross-over speed. First, the alert sound must be sufficient to allow a pedestrian to reasonably detect a nearby EV or HV operating at constant speed, accelerating, decelerating and operating in any other scenarios that NHTSA deems appropriate. Second, it must reflect the agency's determination of the minimum sound level emitted by a motor vehicle that is necessary to allow visually-impaired and other pedestrians to reasonably detect a nearby EV or HV operating below the cross-over speed. Third, it must reflect the agency's determination of the performance requirements necessary to ensure that each vehicle's alert sound is recognizable to pedestrians as that of a motor vehicle in operation. In addition, the Act prohibits equipping a vehicle with means for deactivating the alert sound.

[9] The GTR Action Plan (ECE/TRANS/WP.29/2007/4 I) and GTR proposal (ECE/TRANS/WP.29/AC.3/I 7) can be found at *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/gen2007.html* and *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob proposal.html,* respectively.

contain pole side impact test procedures and corresponding side impact test dummies representing a 50th percentile adult male and a 5th percentile adult female.

Australia has since proposed that the GTR be drafted with a 50th percentile adult male dummy requirement and a placeholder for 5th percentile adult female dummy in a first phase since it appears that the WorldSID dummies would be finalized on different timelines with the 50th percentile dummy development expected to be completed well ahead of the smaller one. This would allow contracting parties to obtain benefits of the 50th percentile adult male without having to wait for the 5th percentile adult female to be finalized.

NHTSA is concerned that a GTR, which included requirements for a WorldSID 50th percentile adult, but not a smaller adult dummy such as the SID–IIs, would not provide protection to smaller adults or children. This is because the agency has found that including the smaller 5th percentile dummy is not only important to protecting smaller adults, but is also effective in ensuring airbags and sensors designed for side impact protection work effectively for impact occurring at any point across vehicle full door widths. The IWG is still in the early stages of its work and is expected to meet regularly with periodic reporting to WP.29.

D. Exchange of Information

- Harmonized Side Impact Dummies

This activity is sponsored and chaired by the United States. The IWG working on addressing this issue generally meets in conjunction with the Pole Side Impact GTR IWG meetings as it is tasked with supporting the GTR by developing the WorldSID dummies. Please refer to the discussion in the ''Status of GTRs under development'' section above.

- Enforcement Working Group

At the June 2011 session of WP.29, NHTSA proposed that WP.29 consider forming a new working group that would meet to facilitate the regular exchange of nonproprietary or otherwise non privileged information on enforcement related activities from around the world to help governments identify and manage incidences of automotive non-compliance or defects more quickly. The participants of WP.29 welcomed the proposal and agreed to hold the first meeting during the November session of WP.29. The new working group includes only governmental representatives to facilitate the open flow of information between the vehicle safety enforcement arms of the various contracting parties.

E. Compendium of Candidate GTRs

Article 5 of the 1998 Global Agreement provides for the creation of a compendium of candidate technical regulations submitted by the Contracting Parties. To date, NHTSA has submitted several Federal Motor Vehicle Safety Standards (FMVSS) for inclusion in this Compendium. These FMVSS have all been listed in the Compendium after an affirmative vote of the Executive Committee of the 1998 Global Agreement.

The FMVSS listed in the Compendium include:

- FMVSS 202a: Head Restraints
- FMVSS 108: Lamps, Reflective Devices, and Associated Equipment
- FMVSS 135: Passenger Car Brake Systems
- FMVSS 139: New Pneumatic Radial Tires for Light Vehicles
- FMVSS 205: Glazing Materials
- FMVSS 213: Child Restraint Systems
- US EPA and the DOT programs for Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards

Additionally, the Compendium contains Japan's submission for its technical standard for fuel leakage entitled ''Regulations for road vehicles in Japan regarding hydrogen and fuel-cell vehicles.''

IV. Request for Comments

NHTSA invites public comments on the various activities outlined in this notice. The agency plans to issue new proposed rules based on each GTR as they are established by WP.29 and will consider additional detailed comments at that time. In the event that the public's comments provide new information and data that leads the agency to adopt final rules that significantly differ from the GTRs upon which they were initially proposed, NHTSA will consider seeking amendments to those GTRs in an effort to maintain harmonization.

Issued on: January 20, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–1853 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0013]

Wheego Electric Cars, Inc. Receipt of Petition for Temporary Exemption From the Electronic Stability Control Requirements of FMVSS No. 126

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

ACTION: Notice of receipt of a petition for temporary exemption from Federal Motor Vehicle Safety Standard (FMVSS) No. 126, *Electronic Stability Control Systems.*

SUMMARY: In accordance with the procedures in 49 CFR part 555, Wheego Electric Cars, Inc., has petitioned the agency for a temporary exemption from the electronic stability control requirements of FMVSS No. 126. The basis for the application is that the petitioner avers that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety level of that vehicle.[1] This notice of receipt of an application for a temporary exemption is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than February 29, 2012.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov*. Follow the instructions for submitting comments on the electronic docket site by clicking on ''Help and Information'' or ''Help/Info.''
- *Fax:* 1 (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

[1] To view the application and its supplement, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. Telephone: (202) 366–9826.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Statutory Basis for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, authorizes the Secretary of Transportation to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority in this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. A vehicle manufacturer wishing to obtain an exemption from a standard must demonstrate in its application (A) that an exemption would be in the public interest and consistent with the Safety Act and (B) that the manufacturer satisfies one of the following four bases for an exemption: (i) Compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith; (ii) the exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard; (iii) the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or (iv) compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

For an exemption petition to be granted on the basis that the exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of the vehicle, the petition must include specified information set forth at 49 CFR 555.6(c). The main requirements of that section include: (1) Substantiation that the vehicle is a low-emission vehicle; (2) documentation establishing that a temporary exemption would not unreasonably degrade the safety of a vehicle; (3) substantiation that a temporary exemption would facilitate the development or field evaluation of the vehicle; (4) a statement of whether the petitioner intends to conform to the standard at the end of the exemption period; and (5) a statement that not more than 2,500 exempted vehicles will be sold in the United States in any 12-month period for which an exemption may be granted.

II. Electronic Stability Control Systems Requirement

In April 2007, NHTSA published a final rule requiring that vehicles with a gross vehicle weight rating of 4,536 kilograms (kg) (10,000 pounds) or less be equipped with electronic stability control (ESC) systems. ESC systems use automatic computer-controlled braking of individual wheels to assist the driver in maintaining control in critical driving situations in which the vehicle is beginning to lose directional stability at the rear wheels (spin out) or directional control at the front wheels (plow out). An anti-lock brake system (ABS) is a prerequisite for an ESC system because ESC uses many of the same components as ABS. Thus, the cost of complying with FMVSS No. 126 is less for vehicle models already equipped with ABS.

Preventing single-vehicle loss-of-control crashes is the most effective way to reduce deaths resulting from rollover crashes. This is because most loss-of-control crashes culminate in the vehicle leaving the roadway, which dramatically increases the probability of a rollover. NHTSA's crash data study of existing vehicles equipped with ESC demonstrated that these systems reduce fatal single-vehicle crashes of passenger cars by 55 percent and fatal single-vehicle crashes of light trucks and vans (LTVs) by 50 percent.[2] NHTSA estimates that ESC has the potential to prevent 56 percent of the fatal passenger car rollovers and 74 percent of the fatal LTV first-event rollovers that would otherwise occur in single-vehicle crashes.[3]

The ESC requirement became effective for substantially all vehicles on September 1, 2011.

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Wheego Electric Cars, Inc. (Wheego) submitted a petition dated August 15, 2011 asking the agency for a temporary exemption from the electronic stability control requirements of FMVSS No. 126. Wheego submitted a supplement to its application by letter dated December 2, 2011. The basis for the application is that the exemption would make the development or field evaluation of a low-emission vehicle easier and would not unreasonably lower the safety level

[2] Sivinski, R., Crash Prevention Effectiveness of Light-Vehicle Electronic Stability Control: An Update of the 2007 NHTSA Evaluation; DOT HS 811 486 (June 2011).

[3] *Id.*

of that vehicle. Wheego has requested an exemption for the LiFe model until August 1, 2012.

Wheego is a Delaware corporation with its headquarters in Atlanta, Georgia. Wheego began manufacturing and selling low-speed electric vehicles in the U.S. in June 2009. In April 2011, Wheego began manufacturing its first all-electric passenger car, the two-door, two-seat LiFe model. Wheego also states that it is developing a four-door passenger vehicle for sale in late 2012.

In February 2011, Wheego was granted a temporary exemption from the advanced air bag requirements of FMVSS No. 208, *Occupant Crash Protection,* that is effective until February 11, 2013.[4] Wheego states that it plans to meet all other currently applicable FMVSSs for a passenger car.

Wheego asserts that the company had intended to develop an ESC system for the LiFe. However, Wheego asserts that delays in funding and later developments made it impossible for Wheego to develop an ESC system for the LiFe before September 2011. Wheego requests an exemption from the ESC requirements until August 1, 2012 for up to 500 vehicles so that it can continue its development and evaluation of a low-emission vehicle.[5] Wheego states that the company intends to comply with FMVSS No. 126 at the end of the exemption period.

Wheego asserts that a temporary exemption would not unreasonably degrade the safety or impact protection of the vehicle. Wheego states that the LiFe has an ABS system that prevents loss of control by preventing the wheels from locking up and the tires from skidding during braking. Wheego also asserts that its standard tires are wide with wide, circumferential grooves that provide rapid water evacuation to aid wet traction. Wheego notes that the LiFe is limited to a top speed of 65 mph, which may contribute to a reduction of crashes associated with high speeds. Wheego also states that the LiFe has a low center of gravity with 762 pounds of batteries beneath the floorboard of the vehicle. Further, Wheego argues that the relatively limited range of the LiFe compared to gasoline-powered vehicles (100 miles before needing a charge) makes it less likely that a LiFe would be involved in a high-speed or rollover crash. Wheego also asserts that the relatively small number of vehicles that would be produced under the exemption suggests that the exemption would have a negligible effect on vehicle safety.

Wheego argues that an exemption would make the development or field evaluation of a low-emission vehicle easier. Wheego states that it would be able to use consumer feedback and other testing and evaluation to improve design and efficiency to improve charging, battery management, and safety systems in future vehicle models. Wheego states that, without the exemption, the company would not be able to produce enough cars or revenue to sustain these developments or to launch a new vehicle model. Wheego also believes that its success can add to the overall development of low-emission vehicles as a whole by demonstrating the viability of electric cars to consumers and encouraging other manufacturers to build electric cars.

Wheego also asserts that the granting of the exemption would be in the public interest. Wheego notes that NHTSA has traditionally found that the public interest is served by affording consumers a wider variety of motor vehicles, by encouraging the development of fuel-efficient and alternative-energy vehicles, and by providing additional employment opportunities. Wheego asserts that granting this petition serves each of those interests.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition from Wheego is complete and that Wheego is eligible to apply for a temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

The agency seeks comment from the public on the merits of Wheego's application for a temporary exemption from FMVSS No. 126. We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: January 24, 2012.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2012–1960 Filed 1–27–12; 8:45 am]

BILLING CODE 4910–59–P

[4] See 76 FR 7898 (Feb. 11, 2011); Docket No. NHTSA–2010–0118.

[5] Wheego initially requested an exemption for up to 1,000 vehicles, but later amended its petition to request no more than 500 exempted vehicles.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

January 24, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before February 29, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 11020, Washington, DC 20220, or on-line at *www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

International Affairs

OMB Number: 1505–0018.

Type of Review: Revision a currently approved collection.

Title: Report of Customers' U.S. Dollar Liabilities to Foreigners.

Form: TIC Form BL–2.

Abstract: Form BL–2 is required by law and is designed to collect timely information on international portfolio capital movements, including U.S. dollar liabilities of customers of depository institutions, bank and financial holding companies, brokers and dealers vis-a-vis foreigners. The information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 7,920.

OMB Number: 1505–0189.

Type of Review: Revision a currently approved collection.

Title: Report of Maturities of Selected Liabilities of Depository Institutions, Brokers, and Dealers to Foreigners.

Form: TIC Form BQ–3.

Abstract: Form BQ–3 is required by law and is designed to collect timely information on international portfolio capital movements, including maturities of selected U.S. dollar and foreign currency liabilities of depository institutions, bank and financial holding companies, brokers and dealers to foreigners. This information is necessary in the computation of the U.S. balance of payments accounts and the U.S. international investment position, and in the formulation of U.S. international financial and monetary policies.

Affected Public: Private Sector: businesses or other for-profits.

Estimated Total Annual Burden Hours: 1,872.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–1812 Filed 1–27–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Submission for OMB Review, Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, on behalf of itself and the United States Bureau of Engraving and Printing (BEP) and as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on two proposed information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The BEP intends to request approval from the Office of Management and Budget (OMB) for two generic clearances. The first generic clearance will allow the BEP to collect information from attendees of conferences and gatherings for persons who are blind and visually impaired about which tactile features most effectively provide meaningful access to denominate United States paper currency. The second generic clearance will allow the BEP to engage in scientific studies that will help gauge the acuity with which blind and visually impaired persons can denominate United States paper currency using various, tactile features currently being evaluated.

DATES: Written comments should be received on or before March 30, 2012 to be assured of consideration.

ADDRESSES: Comments regarding these information collections should be addressed to the BEP Contact listed below and to the Treasury Department PRA Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by contacting Sonya White, Deputy Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, 14th and C Streets SW., Washington, DC 20228, by telephone at (202) 874–8184, or by e-mail at *sonya.white@bep.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearances for Meaningful Access Information Collections.

OMB Control Number: NEW.

Abstract: A court order was issued in *American Council of the Blind* v. *Paulson,* 591 F. Supp. 2d 1 (D.D.C. 2008) (''*ACB* v. *Paulson''*) requiring the Department of the Treasury and BEP to ''provide meaningful access to United States currency for blind and other visually impaired persons, which steps shall be completed, in connection with each denomination of currency, not later than the date when a redesign of that denomination is next approved by the Secretary of the Treasury * * *.''

In compliance with the court's order, BEP intends to meet individually with blind and visually impaired persons and request their feedback about tactile features that BEP is considering for possible incorporation into the next U.S. paper currency redesign. BEP employees will attend national conventions and conferences for disabled persons. At those gatherings, BEP employees will invite blind and visually impaired persons to provide feedback about certain tactile features being considered for inclusion in future United States currency paper designs. The BEP intends to contract with specialists in the field of tactile acuity to develop methodologies for collecting the feedback.

The BEP also intends to contract with specialists in the field of tactile acuity to conduct scientific tests. The specialists contracted with by the BEP will conduct acuity testing with select groups of blind and visually impaired volunteers. The acuity tests will help either confirm or provide other perspectives on the results of BEP's information collections at national conferences and conventions. The acuity tests will also help provide a scientific basis on which BEP determines the tactile feature to be incorporated into the next United States paper currency design.

The BEP's information collection activities at national conferences will use identical methodologies or otherwise share a common element as those employed by specialists contracted with by BEP to perform scientific acuity studies. Thus the BEP, in order to comply with the court's order in *ACB* v, *Paulson* requests OMB approval for two generic clearances to conduct various information collection activities. Over the next three years, the BEP anticipates undertaking a variety of new information collection activities related to BEP's efforts to provide meaningful access to U.S. paper currency for blind and visually impaired persons. Following standard OMB requirements, for each information collection that BEP proposes to undertake under each of these generic clearances, the OMB will be notified at least two weeks in advance and provided with a copy of the information collection instrument along with supportive materials. The BEP will only undertake a new collection if the OMB does not object to the BEP's proposal.

Type of Review: New Collection.

Affected Public: Individuals, Organizations.

Respondent's Obligation: Voluntary.

Estimated Number of Respondents: Approximately 500 per year. With regard to information collected at conferences and conventions, BEP is able to estimate the number of attendees at such conferences and meetings based on historical data. The BEP, however, only collects information from volunteers who stop by its information booth, and who care to take the time responding to questions. It is difficult, therefore, to estimate the actual number of respondents from whom BEP may be able to collect information in a year.

Estimated Average Time per Respondent: 15 minutes per response.

Estimated Total Annual Burden Hours: Approximately 125 burden hours.

With regard to scientifically based acuity studies, they will be designed and conducted at various locations around the country as prescribed by the specialist contracted by the BEP. The BEP estimates two such studies will be conducted per calendar year. Each study will likely involve up to 50 subjects. Each individual data collection session will be approximately 60 minutes long.

Estimated Average Time per Respondent: 60 minutes per response.

Estimated Total Annual Burden Hours: Approximately 100 burden hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burden of the proposed information collection; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the reporting burdens on respondents, including the use of automated collection techniques or other forms of information technology.

Treasury Department PRA Clearance Officer: Robert Dahl, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

BEP Contact: Sonya White, Deputy Chief Counsel, United States Department of the Treasury, Bureau of Engraving and Printing, Room 419–A, 14th and C Streets SW., Washington, DC 20228.

Robert Dahl,

Treasury Department PRA Clearance Officer.

[FR Doc. 2012–1891 Filed 1–27–12; 8:45 am]

BILLING CODE 4810–25–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 19 January 30, 2012

Part II

Department of Defense

Defense Acquisitions Regulations System

48 CFR Part 212, 225, 231, et al.

Defense Federal Acquisition Regulation Supplements; Final Rules and Proposed Rules

DEPARTMENT OF DEFENSE

Defense Acquisitions Regulations System

48 CFR Part 225

RIN 0750–AH50

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds (DFARS Case 2012–D005)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate adjusted thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. Additionally, this rule includes language in prescriptions for use of contract clauses intended to clarify their applicability to commercial items.

DATES: *Effective Date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

I. Background

Every two years, the trade agreements thresholds are adjusted according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds in the **Federal Register** (76 FR 76808 December 8, 2011):

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$202,000	$7,777,000
FTAs:		
Australia FTA	77,494	7,777,000
Bahrain FTA	202,000	10,074,262
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	77,494	7,777,000
Chile FTA	77,494	7,777,000
Morocco FTA	202,000	7,777,000
NAFTA:		
—Canada	25,000	10,074,262
—Mexico	77,494	10,074,262
Peru FTA	202,000	7,777,000
Singapore FTA	77,494	7,777,000

II. Discussion and Analysis

This final rule implements the new thresholds in the clause prescriptions at DFARS 225.1101 and 225.7503.

III. Executive Orders 12866 and 13563

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

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 and does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 is revised to read as follows:

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

■ 2. In section 225.1101, revise paragraph (11)(i) to read as follows:

225.1101 Acquisition of supplies.

* * * * *

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts for the items listed at 225.401–70, including acquisitions of commercial items or components, when the estimated value equals or exceeds $25,000, but is less than $202,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause when the estimated value equals or exceeds $77,494.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $77,494.

* * * * *

■ 3. In section 225.7503, revise paragraphs (a)(1) and (b) to read as follows:

225.7503 Contract clauses.

* * * * *

(a)(1) Use the clause at 252.225–7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States, including acquisitions of commercial items or components, with a value

greater than the simplified acquisition threshold but less than $7,777,000.

* * * * *

(b)(1) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $7,777,000 or more, including acquisitions of commercial items or components.

(2) For acquisitions with a value of $7,777,000 or more, but less than $10,074,262, including acquisitions of comercial items or components, use the clause with its Alternate I, unless the acquisition is in support of Afghanistan.

(3) If the acquisition is for construction with a value of $10,074,262 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of $7,777,000 or more, but less than $10,074,262, and is in support of operations in Afghanistan, use the clause with its Alternate III.

[FR Doc. 2012–1487 Filed 1–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket No. DARS–2011–0082–0002]

RIN 0750–AH48

Defense Federal Acquisition Regulation Supplement: New Designated Country—Armenia (DFARS Case 2011–D057)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add Armenia as a World Trade Organization Government Procurement Agreement (WTO GPA) country and a designated country, due to the accession of Armenia to membership in the World Trade Organization Government Procurement Agreement.

DATES: *Effective Date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone (703) 602–0328; facsimile (703) 602–0350.

SUPPLEMENTARY INFORMATION:

I. Background

On September 15, 2011, Armenia became a party to the World Trade Organization Government Procurement Agreement (WTO GPA). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States (such as the WTO GPA). The President has delegated this waiver authority to the U.S. Trade Representative (see FAR 25.402).

On September 22, 2011, because Armenia became a party to the WTO GPA and because the U.S. Trade Representative has determined that Armenia will provide appropriate reciprocal competitive Government procurement opportunities to United States products and services and suppliers of such products and services, the U.S. Trade Representative published a notice in the **Federal Register** (76 FR 58856) waiving the Buy American Act and other discriminatory provisions for eligible products from Armenia.

II. Discussion and Analysis

FAR 25.003 defines WTO GPA countries by listing the parties to the WTO GPA, and defines ''designated country'' as a WTO GPA country, a Free Trade Agreement country, a least designated country, or a Caribbean Basin country.

Because Armenia is now a WTO GPA country and therefore also a designated country, as determined by the U.S. Trade Representative, this final rule adds Armenia to the lists of WTO GPA countries within the definition of ''designated country'' at DFARS 252.225–7021, Trade Agreements, and 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements. Conforming changes were also made to the clause date at 252.225–7001(b)(12)(i).

III. Executive Orders 12866 and 13563

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

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because an initial regulatory flexibility analysis is only required for proposed or interim rules that require publication for public comment (5 U.S.C. 603) and a final regulatory flexibility analysis is only required for final rules that were previously published for public comment, and for which an initial regulatory flexibility analysis was prepared (5 U.S.C. 604).

Publication of this final rule for public comment is not required by statute (41 U.S.C. 1707) because it recognizes actions taken by the United States Trade Representative that do not have a significant effect on contractors or offerors or a significant effect beyond the internal operating procedures of the Government. Therefore, publication for public comment under 41 U.S.C. 1707 is not required.

V. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the final rule affects the certification and information collection requirement in the provisions at DFARS 252.225–7020, Trade Agreements Certificate, currently approved under OMB clearance 0704–0229, DFARS Part 225, Foreign Acquisition, and associated clauses. DFARS provision 252.225–7020 relies on the definition of ''designated country'' in DFARS 252.225–7021, which now includes Armenia. The impact, however, is negligible. Comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing the burden, in response to approved OMB clearance 0704–0229, should be sent, not later than March 30, 2012 to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Requesters may obtain a copy of the supporting statement for the burden

approved under OMB clearance 0704–0229 from the point of contact identified in this notice. Please cite OMB Control Number 0704–0229, in all correspondence.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 is revised to read as follows:

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

252.212–7001 [Amended].

■ 2. In section 252.212–7001, remove the clause date ''(DEC 2011)'' and add ''(JANUARY 2012)'' in its place and in paragraph (b)(13)(i) remove the clause date ''(OCT 2011)'' and add ''(JANUARY 2012)'' in its place.

■ 3. In section 252.225–7021, remove the clause date ''(OCT 2011)'' and add ''(JAN 2012)'' in its place and in paragraph (a), in the definition for ''Designated country'', revise paragraph (i) to read as follows:

252.225–7021 Trade agreements.

* * * * *

(a) * * *

Designated country * * *

(i) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

* * * * *

■ 4. In section 252.225–7045, remove the clause date ''(JUN 2011)'' and add ''(JAN 2012)'' in its place and in paragraph (a), in the definition for ''Designated country'', revise paragraph (1) to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

(a) * * *

Designated country * * *

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as ''the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu'' (Chinese Taipei)), or the United Kingdom);

* * * * *

[FR Doc. 2012–1488 Filed 1–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 231

RIN 0750–AG96

Defense Federal Acquisition Regulation Supplement; Independent Research and Development Technical Descriptions (DFARS Case 2010–D011)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require major contractors to report independent research and development (IR&D) projects.

DATES: *Effective date:* January 30, 2012.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule at 76 FR 11414 on March 2, 2011, to revise requirements for reporting IR&D projects to the Defense Technical Information Center (DTIC). Beginning in the 1990s, DoD reduced its technical exchanges with industry, in part to ensure independence of IR&D. The result has been a loss of linkage between funding and technological purpose. The reporting requirements of this rule, issued in accordance with 10 U.S.C. 2372, will provide in-process information from IR&D projects, for which reimbursement, as an allowable indirect cost, is sought from DoD, to increase effectiveness by providing visibility into the technical content of industry IR&D activities to meet DoD needs and promote the technical prowess of our industry. Without the collection of this information, DoD will be unable to maximize the value of the IR&D funds it disburses without infringing on the independence of contractors to choose which technologies to pursue in IR&D programs. The public comment period closed May 2, 2011. Four respondents submitted comments on the proposed rule. A discussion of the comments is provided in Section II.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Threshold

Comment: The proposed rule should clarify whether the reporting requirement is triggered by a major contractor's aggregate IR&D costs or the costs of an individual IR&D project. The threshold for triggering the reporting requirement is low and should be increased. The low threshold of $50,000 magnifies the burden to contractors, ACOs, and DCAA auditors, as this threshold would require the reporting of almost any IR&D project. Respondents recommended a number of alternative thresholds.

Response: The $50,000 contractor annual IR&D threshold has been removed from the final rule. DFARS 231.205–18(c)(iii) applies only to major contractors, which are defined as those contractors whose covered segments allocated a total of more than $11,000,000 in IR&D/Bid and Proposal (B&P) costs to covered contracts during the preceding fiscal year. However, contractors who do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities.

B. Proprietary Information

Comment: The proposed rule should ensure that contractor trade secret and proprietary information is protected. It is apparent that DoD is seeking to

collect more than high-level, basic information regarding each IR&D project. Moreover, the proposed rule seeks to incentivize and encourage the voluntary disclosure by contractors of competition-sensitive, proprietary information. The respondent understands that DoD has had concerns with the security of proprietary information contained in the DTIC database, as discussed in a September 2008 presentation by the Deputy Undersecretary of Defense, International Technology Security. Therefore the respondent made the following suggestions:

(1) DoD should first assure that the DTIC database is capable of protecting contractor trade secret and proprietary information. How can DoD assure contractors that the data will not be compromised? The sensitive nature of the data should require encryption at the very least.

(2) DoD should ensure that provisions are in place that provide assurance that only DoD personnel will have access to this data. If any third party contractors have access, ensure that assurances/restrictions are in place to ensure that none of a contractor's proprietary IR&D data is disclosed outside of DoD.

(3) The respondent suggested that the on-line input information be high level only and if the area has interest to DoD, contact the contractor to obtain more detail. This will limit the sensitive information in the database and still allow DoD to obtain the information it seeks.

(4) DoD should reconsider the requirement that the submission of IR&D data be exclusively by means of the DTIC's on-line input form, and alternative means for submission should be permitted.

(5) The rule should be revised so as to avoid imposing on contractors the burden and expense of resisting public release under the Freedom of Information Act (''FOIA'') of information entered into the DTIC database.

(6) The rule should be revised to make clear that the submission of IR&D information is voluntary, and that there is a presumption that information entered into and maintained in the DTIC database pursuant to the rule is confidential, and that its release is likely to cause the provider of the information substantial competitive harm if such information were to be released to the public. This would make it clear that the information entered into the DTIC database is within the scope of FOIA exemption (b)(4) and, therefore, not subject to public disclosure. The Trade Secrets Act, 18 U.S.C. § 1905, prohibits the Government from releasing private information within its possession, unless law otherwise authorizes the release.

(7) DoD should ensure that processes are in place to verify data for accuracy and verify input for timeliness.

(8) The proposed rule should make clear that the Government cannot release or disclose proprietary IR&D submissions outside the Government without the data owner's written authorization. Further, contractors should be able to restrict the internal Government use of such IR&D data to DoD only. If DoD needs to share such proprietary IR&D data with support contractors, such as ''covered Government support contractors'' furnishing independent and impartial advice or technical assistance directly to DoD, then DoD should be required to obtain the data owner's written permission to do so.

Response: (1) Information protection. DTIC advises that adequate controls are in place to protect information from compromise. Only unclassified IR&D project summary information should be provided. Both database screens and printouts will be marked ''Proprietary.'' Any markings on attachments provided by a contractor would not be altered.

(2) Access control. DTIC advises that sufficient measures are being employed to limit access to authorized DoD users.

(3) Inputs. Firms have discretion regarding presentation of information they regard as sensitive when they submit project summaries.

(4) Submission format. The DTIC on-line input form has been established to provide contractors with a template for reporting on their IR&D projects. This format allows for submission of additional information as attachments.

(5) FOIA exemption. Information submitted is within the scope of FOIA exemption (b)(4).

(6) FOIA exemption and trade secrets. Information submitted is within the scope of FOIA exemption (b)(4).

(7) Timeliness and accuracy. Providing updates on an annual basis will ensure timeliness of the information submitted. Firms will be responsible for the accuracy of their submissions.

(8) Proprietary information controls. The rule makes no changes to existing laws and regulations dealing with Government use of proprietary information.

C. DTIC On-Line Form

Comment: The rule should include a copy of the proposed DTIC on-line input form. The proposed rule does not address the nature of the information that must be provided through the proposed DTIC on-line input form and the means of transmission of the form. The respondent recommended that DoD include in any final rule a copy of the DTIC form and instructions for completing the form. By doing so, relevant DoD personnel, including Administrative Contracting Officers (''ACOs'') and Defense Contract Audit Agency (''DCAA'') auditors, and contractors would be provided some certainty regarding the information that would be required to be entered into the DTIC database by contractors and the nature of the form as it may be revised. Unless the rule includes the form, contractors must monitor the form each year and may be subjected to increased reporting from the DTIC without proper notice or opportunity to comment.

Response: DFARS 231.205–18(v) sets forth that the cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination. To that extent, the DTIC on-line input form has been established to provide contractors with a template for reporting on their IR&D projects, and a process to provide such reporting that is designed to minimize the administrative burden on contractors. The DTIC on-line form includes reporting elements such as project title, project number, anticipated expenditures, project description, keywords, and technology readiness level. The DTIC on-line form can be found at *http://www.dtic.mil/ird/dticdb/index.html*.

D. Classified information

Comment: The proposed rule fails to address issues relating to the reporting of classified information. The proposed rule does not address how contractors should handle the reporting of classified information should a contractor's classified IR&D project trigger the reporting requirement. The respondent recommended that DoD address this issue, including whether contractors would be required to report classified IR&D projects and, if such a requirement exists, how contractors would report this information. For example, it is unclear to the respondent whether classified information may properly be transmitted through the DTIC's on-line input form or whether the DTIC database is cleared to maintain classified IR&D project information.

Response: Only unclassified IR&D project summary information should be

provided. Both database screens and printouts will be marked ''Proprietary.''

E. Technical expertise

Comment: The proposed rule includes DCAA in the process to identify IR&D projects having potential interest to DoD, but fails to consider needed technical expertise. ACOs have responsibility for determining whether IR&D projects are of potential interest to DoD and thus satisfy that test for allowability. The proposed rule, however, suggests that DCAA may play some role in the determination process, but it is not clear to the respondent what role DCAA is expected to play. Further, to the extent that the purpose of making the DTIC input and updates available to DCAA is to facilitate assistance to ACOs in making potential interest determinations, this raises the question whether DCAA auditors, or even ACOs, have the necessary technical expertise to properly evaluate IR&D project descriptions to make these determinations. The respondent recommended that DoD clarify what role, if any, DCAA is to play in determining whether IR&D projects are of potential interest to DoD. Further, given the increasing technical complexity of many IR&D projects, should the proposed rule be finalized, the respondent recommended that DoD consider mandating the use of a Defense Contract Management Agency (DCMA) or other technical representative to assist ACOs and, as applicable, DCAA auditors, in evaluating contractor IR&D project descriptions and making potential interest determinations.

Response: This rule does not place additional oversight responsibilities onto DCAA and DCMA. Further, contracting personnel will make appropriate determinations whether IR&D projects are of potential interest to DoD and thus satisfy that test for allowability, in accordance with this rule. However, when specialized expertise is required, contracting officers are expected to consult with auditors and other individuals with specialized experience, as necessary, to ensure a full understanding of issues.

F. Administrative Burden

Comment: The proposed rule would impose administrative burdens on contractors, ACOs, and DCAA auditors. Contractors would need to coordinate the review and approval of the data reported, often across multiple business units for larger IR&D projects, to ensure the information is accurate and relevant and meets the reporting objectives. This would involve contractor management personnel, as well as personnel from functions such as engineering, manufacturing, quality assurance, and many others. In addition to the impact on contractors, the rule would impose administrative burdens on ACOs and DCAA auditors.

Response: The reporting requirements in this rule will provide in-process information to allow DoD to maximize the value of the IR&D funds it disburses without infringing on the independence of contractors to choose which technologies to pursue in IR&D programs. DoD will employ procedures that minimize the administrative burden on contractors.

G. Intent of IR&D Reporting

Comment: A respondent questioned what DoD really intends to do with the information and how much detail will be required to evaluate the ''technical content'' of IR&D projects.

Response: The objective is to support DoD science and technology and acquisition program planning personnel by providing visibility into the technical content of industry IR&D activities to ensure that they meet DoD needs and promote the technical prowess of our industry. For this purpose, only a concise one-and-a-half to two-page overview is needed.

H. DoD-sponsored IR&D

Comment: The phrase ''DoD-sponsored IR&D'' is inconsistent with the concept that IR&D is developed at private expense. The respondent suggested eliminating the phrase DoD-sponsored IR&D.

Response: The phrase ''DoD-sponsored IR&D'' is not used in the DFARS. For clarity, this notice references IR&D projects for which reimbursement, as an allowable indirect cost, is sought from DoD.

I. Patent Issues

Comment: The proposed rule may force contractors to file patent applications on early-stage technologies prematurely. Depending on the specificity of the information required, the proposed rule may also require contractors to seek patent protection for disclosed technologies at an earlier date than would otherwise be the case in order to avoid the bar to patentability provided for in 35 U.S.C. 102. This would entail additional and possibly unnecessary expense, as further development of early-stage technologies often leads to the conclusion that the technology isn't viable and hence does not justify the expense of a patent application. Expressly providing that the submitted information will be accorded confidential treatment may avoid this result, but that isn't clear to the respondent in the proposed rule in its present form.

Response: Firms control the specificity of information submitted. Therefore, this rule will not force contractors to file patent applications on early-stage technologies prematurely. Information submitted will be safeguarded as addressed in responses to comment B.

J. Not a Mandated Statutory Requirement

Comment: 10 U.S.C. 2372 does not mandate IR&D reporting. Contrary to the statement in the background section of the proposed rule, 10 U.S.C 2372 does not mandate any particular form of IR&D reporting. On the contrary, IR&D reporting is permissive. In addition, this information is already required under DFARS 231.205–18 for purposes of determining allowability of IR&D costs. Additional reporting information is not and should not be required. Specifically, the Government already is provided the data and is responsible for reviews of IR&D projects that are of potential interest to DoD under the DFARS clause.

Response: 10 U.S.C 2372 subsection (a), Regulations, states that the Secretary of Defense shall prescribe regulations governing the payment, by the Department of Defense, of expenses incurred by contractors for independent research and development and bid and proposal costs. To that extent, subsection (c), Additional controls, states that the regulations prescribed pursuant to subsection (a) may include implementation of regular methods for transmission from contractors to the Department of Defense, in a reasonable manner, of information regarding progress by the contractor on the contractor's independent research and development programs. The requirement to determine the allowability of IR&D costs is a pre-established requirement in 231.205–18(c)(iii)(B), which sets forth that allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD. The reporting requirements of this rule will provide necessary information to DoD cognizant administrative contracting officers to make the required allowability determinations.

K. Allowability of IR&D Costs

Comment: DoD should not make IR&D cost allowability contingent on reporting. Under the proposed rule, IR&D costs would be unallowable for projects exceeding $50,000 unless the project(s) are reported in the DTIC.

Using the disallowance of costs to enforce the proposed reporting requirement is unnecessary and unreasonable and would result in sanctions that are disproportional to the potential harm to DoD. Normally, if a contract fails to comply with such a contractual reporting requirement, the noncompliance would be treated as a breach of contract judged on the basis of its materiality. Moreover, claimed contractor IR&D costs are currently auditable by the Defense Contract Audit Agency to support G&A rate audits. DoD already is protected from improper charging including the remedy of double damages and interest on expressly unallowable costs.

Response: The requirement to determine the allowability of IR&D costs is a pre-established requirement in the DFARS. Specifically, 231.205–18(c)(iii)(B) sets forth that allowable IR&D/B&P costs are limited to those costs for projects that are of potential interest to DoD. Further, 231.205–18(c)(iv) states that for major contractors, the cognizant ACO or corporate ACO shall determine whether IR&D/B&P projects are of potential interest to DoD. This rule establishes reporting requirements to provide necessary information to DoD cognizant ACOs to make the required allowability determinations.

L. Impacts to Small Businesses

Comment: The proposed rule's Regulatory Flexibility Act section states that the reporting requirements will not apply to a significant number of small businesses. If the reporting requirement is not limited to major contractors and is not on a per project basis, the low threshold likely will capture many small businesses. Given the current state of DoD contracting and the complex systems required to support DoD, there are very few IR&D projects that can be performed for less than $50,000 and thus the requirements, in effect, will apply to most IR&D, including those performed by small businesses. The respondent, therefore, respectfully disagreed with DoD's suggestion that the requirements will not apply to a significant number of small businesses.

Response: DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because 231.205–18(c)(iii) applies only to major contractors, which are defined as those whose covered segments allocated a total of more than $11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year. The $50,000 contractor annual IR&D threshold has been removed from the final rule. However, DoD has included a new sentence in the rule to encourage small businesses to submit their project description since there may be an advantage to any size business to have its projects included.

M. Increased Costs

Comment: The scope and sweep of this proposed rule is not well defined and is left open to conflicting interpretations. As such, it is difficult for companies to assess the costs of compliance or judge the accuracy of the burden of the proposed information collected without further specificity. For example, the term ''project'' is undefined. It is not uncommon for contractors to account for their IR&D costs not on a project basis but only as charge numbers or cost centers.

Response: The IR&D cost principle at FAR 31.205–18(b) states ''The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety * * *.'' The cost accounting standard at 48 CFR 9904.420–40, Fundamental requirement, paragraph (a) states, ''The basic unit for identification and accumulation of Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs shall be the individual IR&D or B&P project.'' The proposed rule used terms in long use with understood meanings. Further, for contractors to account for their IR&D costs on other than a project basis would result in noncompliant reporting of IR&D costs if the amount of IR&D costs were determined to be material in amount.

N. Public Hearing

Comment: The proposed rule raises many issues and leaves many questions unanswered. In light of this, one respondent requested that DoD hold a public hearing to further discuss the proposed rule and obtain additional comments.

Response: DoD acknowledges the respondent's recommendation. However, DoD has determined that a public meeting is not necessary at this time. Through the public comments received in response to the proposed rule, DoD has determined that it has a clear understanding of public issues and concerns.

III. Executive Orders 12866 and 13563

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

IV. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

DoD does not expect this final rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because reporting the IR&D projects utilizing the DTIC on-line input form does not require contractors to expend significant effort or cost. Furthermore, since 231.205–18(c)(iii) applies only to major contractors, which are defined as those whose covered segments allocated a total of more than $11,000,000 in IR&D/B&P costs to covered contracts during the preceding fiscal year, the IR&D project reporting requirements will not apply to a significant number of small entities. Reporting the IR&D projects will utilize the DTIC on-line input form, which does not require contractors to expend significant effort or cost. No alternatives to the rule that would meet the stated objectives were identified by the agency.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB has cleared this information collection requirement through January 31, 2015 under OMB Control Number 0704–0483, titled: Defense Federal Acquisition Regulation Supplement (DFARS) Part 231, Contract Cost Principles and Procedures.

List of Subjects in 48 CFR Part 231

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 231 is amended as follows:

PART 231— CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 231 is revised to read as follows:

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

■ 2. In section 231.205–18, add paragraph (c)(iii)(C) and revise paragraph (c)(iv) introductory text to read as follows:

231.205–18 Independent research and development and bid and proposal costs.

* * * * *

(c) * * *

(iii) * * *

(C) For a contractor's annual IR&D costs to be allowable, the IR&D projects generating the costs must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions at *http://www.dtic.mil/ird/dticdb/index.html.* The inputs must be updated at least annually and when the project is completed. Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs. Contractors that do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities.

(iv) For major contractors, the ACO or corporate ACO shall—

* * * * *

[FR Doc. 2012–1490 Filed 1–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 242, 247, 252, and 253

RIN 0750–AH53

Defense Federal Acquisition Regulation Supplement: Shipping Instructions (DFARS Case 2011–D052)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update the form used by contractors to request shipping instructions and the associated contract clause and clause prescription to cover both commercial and Government bills of lading, and to relocate the coverage within the DFARS.

DATES: *Comment Date:* Comments on the proposed rule should be submitted in writing to the address shown below on or before March 30, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D052, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2011–D052'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D052.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D052'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2011–D052 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov*, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, telephone (703) 602–1302.

SUPPLEMENTARY INFORMATION:

I. Background

Since 1991, DoD has used the clause at DFARS 252.242–7003, Application for U.S. Government Shipping Documentation/Instructions, to instruct contractors to use the DD Form 1659, entitled ''Application for U.S. Government Shipping Documentation/Instructions,'' to request instructions for shipment from the Transportation Officer or contract administration office. In recent years, however, DoD primarily uses commercial bills of lading (with some exceptions for international shipments, noncontiguous domestic trade shipments, and/or customs considerations) where use of Government bills of lading is appropriate. Therefore, the preferred term is ''bill(s) of lading,'' which includes both commercial and Government bills of lading.

FAR Case 2002–005, published as a final rule on April 19, 2006, moved FAR subpart 42.14, Traffic and Transportation Management, to FAR part 47, Transportation. As a result of publication of FAR Case 2002–005, this rule proposes to delete or relocate material, as necessary, from DFARS 242.14, by—

- Relocating the clause prescription at DFARS 242.1404–2–70 to DFARS 247.207, with revisions that will simplify and clarify requirements for use of the DFARS clause, and removing the obsolete clause prescription at DFARS 242.1404–2 because the prescribed clauses are no longer required;
- Including the clause prescription for DFARS 252.247–70XX in DFARS 212.301, as this clause is applicable under commercial contracts;
- Relocating the clause to DFARS 252.247–70XX from its current location in DFARS 252.242–7003, to align with the relocation of related DFARS coverage on transportation and related services, and deleting the single word ''Government'' in both the clause and the DD Form 1659;
- Removing the obsolete requirement to use the DD Form 1659 when using the clauses at FAR 52.242–10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, or 52.242–11, F.o.b. Origin—Government Bills of Lading or Indicia Mail;
- Relocating the shipping instructions at DFARS 242.1403 to DFARS 247.101(h), and deleting the obsolete shipping instructions; and
- Removing DFARS 242.1405, as this same reference is included in FAR 47.207–10.

The DD Form 1659 will also be corrected to replace the word ''contractor'' with ''commercial'' when expanding the term Commercial and Government Entity (CAGE) Code in the legend. The term ''continental United States'' will be corrected to ''contiguous United States.''

II. Executive Orders 12866 and 13563

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

III. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because there are no substantive changes being made by this rule. The rule proposes only to delete the word ''Government'' in front of ''Bill(s) of Lading'' in the DD Form 1659 and the associated clause at DFARS 252.247–70XX (previously DFARS 252.242–7003) in order to clarify that the DD Form 1659 can be used to request a bill of lading that inputs these shipments into the Defense Transportation System. The purpose of this form is to obtain shipping instructions, a common practice that has been in effect since 1991, and does not impose an additional hardship on any entity. Many services/agencies have moved toward an electronic environment eliminating the need to submit the DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions. In these instances, shipment requests are obtained through an automated system.

Therefore, an initial regulatory flexibility analysis has not been performed. However, DoD invites comments from small business concerns and other interested parties on the

expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D052), in correspondence.

IV. Paperwork Reduction Act

This rule contains information collection requirements in the clause at DFARS 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, and the associated form, DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions (previously, the clause at DFARS 252.242–7003), currently approved through March 31, 2013, under OMB Control Number 0704–0250, titled DFARS part 242, Contract Administration and Audit Services, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The reduction in paperwork burden realized through use of electronic request systems is negligible because preparation of the DD Form 1659, a common practice since 1991, is not a significant administrative burden. Additionally, there is a negligible impact on paperwork burden resulting from revisions to the DD form, because only the single word ''Government,'' in front of ''Bill(s) of Lading'' is being revised, and two terms are being updated. There are no substantive changes being made either to the form or to the associated clause at DFARS 252.247–70XX.

List of Subjects in 48 CFR Parts 212, 242, 247, 252, and 253

Accounting, Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 212, 242, 247, 252, and 253 as follows:

1. The authority citation for 48 CFR parts 212, 242, 247, 252, and 253 is revised to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. In section 212.301, add paragraph (f)(iv)(N) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(iv) * * *

(N) Use the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, as prescribed in 247.207.

* * * * *

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 242.14—[Removed]

3. Remove subpart 242.14.

PART 247—TRANSPORTATION

4. Add subpart 247.1, consisting of section 247.101, to read as follows:

Subpart 247.1—General

247.101 Policies

(h) *Shipping documents covering f.o.b. origin shipments.* (i) Procedures for the contractor to obtain bills of lading are in the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions.

(ii) The term ''commercial bills of lading'' includes the use of any commercial form or procedure.

5. Revise section 247.207 to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

(1) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts for carriage, including acquisitions of commercial items, in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

(2) Use the clause at 252.247–70XX, Application for U.S. Government Shipping Documentation/Instructions, in solicitations and contracts, including acquisitions of commercial items, when shipping under Bills of Lading and Domestic Route Order under f.o.b. origin contracts, Export Traffic Release regardless of f.o.b. terms, or foreign military sales shipments.

6. In subpart 247.2, add sections 247.207–11 and 247.207–70 to read as follows:

247.207–11 Volume movements within the contiguous United States.

For reporting of volume movements within the contiguous United States, follow the procedures at PGI 247.207–11.

247.207–70 Demurrage and detention charges.

Follow the procedures for demurrage and detention charges at PGI 247.207–70.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.242–7003 [Removed and Reserved]

7. Section 252.242–7003 is removed and reserved.

8. Section 252.247–70XX is added to read as follows:

252.247–70XX Application for U.S. Government Shipping Documentation/Instructions.

As prescribed in 247.207, use the following clause:

APPLICATION FOR U.S. GOVERNMENT SHIPPING DOCUMENTATION/INSTRUCTIONS (DATE)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall request bills of lading by submitting a DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to the—

(1) Transportation Officer, if named in the contract schedule; or

(2) Contract administration office.

(b) If an automated system is available for shipment requests, use service/agency systems (e.g., Navy's Global Freight Management–Electronic Transportation Acquisition (GFM–ETA) and Financial Air Clearance Transportation System (FACTS) Shipment Processing Module, Air Force's Cargo Movement Operations System, DCMA's Shipment Instruction Request (SIR) e-Tool application, and DLA's Distribution Standard System Vendor Shipment Module) in lieu of DD Form 1659.

(End of clause)

[FR Doc. 2012–1494 Filed 1–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

RIN 0750–AH54

Defense Federal Acquisition Regulation Supplement; Performance-Based Payments (DFARS Case 2011–D045)

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

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition

Regulation Supplement (DFARS) to provide detailed guidance and instructions on the use of the performance-based payments analysis tool.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 30, 2012, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2011–D045, using any of the following methods:

Regulations.gov: http://www.regulations.gov.

Submit comments via the Federal eRulemaking portal by inserting ''DFARS Case 2011–D045'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D045.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D045'' on your attached document. Follow the instructions for submitting comments.

Email: dfars@osd.mil. Include DFARS Case 2011–D045 in the subject line of the message.

Fax: (703) 602–0350.

Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, telephone (703) 602–0302.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to provide requirements for the use of the performance-based payments (PBP) analysis tool. The PBP analysis tool is a cash-flow model for evaluating alternative financing arrangements, and is required to be used by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards resulting from solicitations issued on or after July 1, 2011.

II. Executive Orders 12866 and 13563

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

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule proposes to provide detailed guidance and instructions on the use of the performance-based payments (PBP) analysis tool. The objective of the rule is to amend the DFARS to provide requirements for the use of the PBP analysis tool. The PBP analysis tool is a cash-flow model for evaluating alternative financing arrangements, and is required to be used by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards resulting from solicitations issued on or after July 1, 2011.

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because requiring the use of the PBP analysis tool by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards does not require contractors to expend significant effort or cost. Since performance-based payments are already the preferred Government financing method, this rule is not expected to increase the frequency of use of such financing situations. No known alternatives to the rule have been identified.

At this time, DoD is unable to estimate the number of small entities to which this rule will apply. Therefore, DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D045) in correspondence.

IV. Paperwork Reduction Act

The proposed rule contains new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). DoD invites public comments on the following aspects of the proposed rule: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing.

Type of Request: New collection.

Number of Respondents: 570.

Responses per Respondent: 1.

Annual Responses: 570.

Average Burden per Response: 1.0 hours.

Annual Burden Hours: 570.

Needs and Uses: This information collection is necessary in order to use the PBP analysis tool, required by all contracting officers contemplating the use of performance-based payments on new fixed-price type contract awards.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received

from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *dfars@osd.mil.* Include DFARS Case 2011–D045 in the subject line of the message.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 232 and 252 are proposed for amendment as follows:

1. The authority citation for 48 CFR parts 232 and 252 is revised to read as follows:

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

PART 232—CONTRACT FINANCING

2. In section 232.1001, add paragraph (a) to read as follows:

232.1001 Policy.

(a) As with all contract financing, the purpose of performance-based payments is to assist the contractor in the payment of costs incurred during the performance of the contract. Therefore, performance-based payments should never exceed total cost incurred at any point during the contract. See PGI 232.1001 for additional information on use of performance-based payments.

3. In section 232.1004, revise the section heading and add paragraph (b) to read as follows:

232.1004 Procedures.

(b) Prior to using performance-based payments, the contracting officer shall—

(i) Agree with the offeror on price using customary progress payments before negotiation begins on the use of performance-based payments, except for modifications to contracts that already use performance-based payments;

(ii) Analyze the performance-based payments schedule using the performance-based payments (PBP) analysis tool. The PBP analysis tool is on the DPAP Web site in the Cost, Pricing, and Finance section, performance-based payments analysis tool, at *http://www.acq.osd.mil/dpap/cpf/Performance_based_payments.html.*

(A) If performance-based payments are desired, the contractor shall submit a proposed performance-based payments schedule which includes all performance-based payments events, completion criteria, and event values, along with the expected expenditure profile. If performance-based payments are deemed practical, the Government will evaluate and negotiate the details of the performance-based payments schedule.

(B) For modifications to contracts that already use performance-based payments financing, the basis for negotiation must include performance-based payments. The (PBP) analysis tool will be used in the same manner to help determine the price for the modification. The only difference is that the baseline assuming customary progress payments will reflect an objective profit rate instead of a negotiated profit rate;

(iii) Negotiate the consideration to be received by the Government if the performance-based payments payment schedule will be more favorable to the contractor than customary progress payments;

(iv) Obtain the approval of the business clearance approving official, or one level above the contracting officer, whichever is higher, for the negotiated consideration; and

(v) Document in the contract file that the performance-based payments schedule provides a mutually beneficial settlement position that reflects adequate consideration to the Government for the improved contractor cash flow.

* * * * *

4. Add section 232.1005 to read as follows:

232.1005 Contract clauses.

The contracting officer shall include the following clauses in contracts that include performance-based payments:

(a) For performance-based payments made on a whole-contract basis, use the clause at 252.232–70XX, Performance-Based Payments—Whole-Contract Basis.

(b) For performance-based payments made on a deliverable-item basis, use the clause at 252.232–70YY, Performance-Based Payments—Deliverable-Item Basis.

PART 252–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Add sections 252.232–70XX and 252.232–70YY to read as follows:

252.232–70XX Performance-Based Payments—Whole-Contract Basis.

As prescribed in 232.1005(a), use the following clause:

Performance-Based Payments—Whole-Contract Basis (DATE)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract, and shall apply to the whole contract. The performance-based payments schedule (Contract Attachment __) describes the basis for payment, to include identification of the individual payment events, evidence of completion, and amount of payment due upon completion of each event.

(b)(i) At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under this contract. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232–32, submit supporting information for all payment requests using the following format:

Current performance-based payment(s) events addressed by this request:		
Contractor will Identify:	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s)		
(1b) Negotiated value of the current performance-based payment(s) event(s)		
(1c) Cumulative negotiated value of performance-based payment(s) events completed to date (1a) + (1b)		
(2) Total costs incurred to date		
(3) Enter the amount from (1c) or (2), whichever is less		
(4) Cumulative amount of payments previously requested		
(5) Payment amount requested for the current performance-based payment(s) event(s) (3) - (4)		

(ii) The Contractor shall not submit payment requests more frequently than monthly.

(iii) Incurred cost is determined by the Contractor's accounting books and records.

(End of clause)

252.232–70YY Performance-Based Payments—Deliverable-Item Basis.

As prescribed in 232.1005(b), use the following clause:

Performance-Based Payments—Deliverable-Item Basis (DATE)

(a) Performance-based payments shall form the basis for the contract financing payments provided under this contract and shall apply to Contract Line Items (CLINs) ____, ____, and ____. The performance-based payments schedule (Contract Attachment ____) describes the basis for payment, to include identification of the individual payment events, CLINs to which each event applies, evidence of completion, and amount of payment due upon completion of each event.

(b)(i) At no time shall cumulative performance-based payments exceed cumulative contract cost incurred under CLINs ____, ____, and ____. To ensure compliance with this requirement, the Contractor shall, in addition to providing the information required by FAR 52.232–32, submit supporting information for all payment requests using the following format:

Current performance-based payment(s) event(s) addressed by this request:		
Contractor will Identify:	Amount	Totals
(1a) Negotiated value of all previously completed performance-based payment(s) event(s)		
(1b) Negotiated value of the current performance-based payment(s) event(s)		
(1c) Cumulative negotiated value of performance-based payment(s) event(s) completed to date (1a) + (1b)		
(2) Total costs incurred to date		
(3) Enter the amount from (1c) or (2), whichever is less		
(4) Cumulative amount of payments previously requested		
(5) Payment amount requested for the current performance-based payment(s) event(s) (3) - (4)		

(ii) The Contractor shall not submit payment requests more frequently than monthly.

(iii) Incurred cost is determined by the Contractor's accounting books and records.

(End of clause)

[FR Doc. 2012–1498 Filed 1–27–12; 8:45 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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